***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+ELECTION PETITION Nos.1 and 4 of 2004

% 30.8.2007

Dr.N.Sudhakar Rao
and another.

...Petitioners

Vs.

$ Dugyala Srinivasa Rao
and others.

...Respondents

! COUNSEL FOR PETITIONERS: Learned Senior Counsel Sri M.R.K.Chowdary.

^ COUNSEL FOR RESPONDENTS: Learned Senior Counsel Sri Movva Chandrasekhar Rao.

<GIST

>HEAD NOTE:

? CASES REFERRED:

1 AIR 1969 SC 302
2 AIR 1969 SC 447
3 (1981) 3 SCC 260
4 AIR 1993 SC 212
5 AIR 2001 SC 2583 = (2001) 7 SCC 425
6 (2002) 5 SCC 568
7 AIR 2002 SC 3524 = (2002) 8 SCC 467
8 (2005) 1 SCC 212
9 AIR 2006 SC 918 = (2006) 2 SCC 682
10 AIR 1962 SC 779
11 AIR 1964 SC 1714
12 AIR 1977 SC 2149

13 AIR 1988 SC 2149
14 AIR 1969 SC 1201 = (1969) 3 SCC 238
15 AIR 1984 SC 209 = (1984) 1 SCC 390
16 AIR 1987 SC 1577
17 AIR 2002 SC 241 = (2002) 1 SCC 160
18 AIR 1984 SC 988 = (1984) 2 SCC 205
19 AIR 1975 SC 420 = (1975) 1 SCC 589
20 AIR 1950 FC 140
21 AIR 1974 SC 1281 = (1974) 4 SCC 396
22 AIR 1975 SC 641 = (1975) 3 SCC 638
23 AIR 1977 SC 2257 = (1977) 4 SCC 377
24 AIR 1979 SC 429 = (1979) 1 SCC 477
25 AIR 1989 SC 1289 = (1989) 2 SCC 484
26 (1995) 4 SCC 51
27 (1999) 9 SCC 386
28 AIR 1962 SC 110
29 AIR 1962 SC 113
30 AIR 1963 SC 1685
31 AIR 1977 SC 151
32 AIR 1954 SC 236
33 AIR 1964 SC 254
34 AIR 1959 SC 876
35 AIR 1966 SC 580
36 AIR 1971 SC 1943
37 AIR 1976 SC 2130
38 AIR 2005 SC 1624 = (2005) 1 SCC 212
39 AIR 1986 SC 1370
40 (1988) 3 Comp.LJ 1 (SC)
41 1897 Appeal Cases 22 = (1895-1899) All ER 33
42 AIR 1963 MP 316

THE HON'BLE SRI JUSTICE V.V.S.RAO

ELECTION PETITION Nos.1 and 3 of 2004

COMMON JUDGMENT:

Introduction:

Election for 263-Chennur Legislative Assembly Constituency in Andhra Praesh was held on 20.4.2004. Petitioner, Dr.N.Sudhakar Rao, first respondent, Dr.Dugyala Srinivasa Rao, and respondents 2 to 5 in E.P. No.3 of 2004 contested the election. Petitioner was in the fray on behalf of Telugu Desam Party and first respondent contested as Telangana Rashtra Samithi (TRS) candidate. Second respondent was Bahujan Samaj Party candidate, third respondent was Praja Party candidate whereas respondents 4 and 5 contested as Independents. The counting was held on 11.5.2004. First respondent secured 67,912 votes and was declared elected as Member of Legislative Assembly (MLA) of Chennur constituency. Petitioner got 59,821 votes and he

was nearest rival of the elected candidate. This petition is filed under Sections 80A, 81, 100 and 101 of the Representation of the People Act, 1951 (the Act, for brevity) and the Rules made there under, challenging the election of first respondent. He also seeks declaration that the election of first respondent is void and for further declaration that the petitioner is duly elected as MLA of Chennur constituency.

E.P.No.1 of 2004 is filed by

Sri P.Saibaba Rao, a voter whose name is allegedly registered at Sl.No.1047, Block 3 and 4 of Laxmakkapalli village forming part of Chennur constituency. In this petition, a declaration is sought to declare the election of first respondent as void. Therefore by order dated 13.4.2005 and with the consent of Counsel appearing on both the sides, E.P.Nos.1 and 3 of 2004 were clubbed and the evidence was recorded in E.P.No.3 of 2004. This common judgment shall dispose of both the Election Petitions.

Pleadings in E.P.No.3 of 2004:

As per the notification issued by the Election Commission of India period for filing nominations is from 24.3.2004 to 31.3.2004 before 3.00 pm. As per election schedule fixed scrutiny of nominations was on 02.4.2004 and for withdrawals 05.4.2004 3.00 pm. The polling was held on 20.4.2004 from 8.00 am to 5.00 pm and the counting took place on 11.5.2004. On that day, the Returning Officer declared in Form No.21-E under Rule 64 of Conduct of Election Rules, 1961, that first respondent was elected. Subsequently, it is noticed that first respondent is disqualified under Section 9-A of the Act, as he is found to have had contracts which were subsisting in respect of execution of certain works undertaken by Government. First respondent is a Special Class Contractor. The execution of the work of laying roads and other constructions was entrusted to him. He did not fully execute these works. Certain parts of the works entrusted to him remained incomplete. There was no termination of contract by mutual consent having effect of discharging first respondent from liability under the contracts. Therefore, he is disqualified for being chosen as MLA.

The defeated candidate in his election petition has pointed out three works in regard to the alleged disqualification incurred by first respondent. For the sake of convenience, these works are referred to as (i) Road works to Reponi and Khanapur; (ii) Kakatiya canal works; and (iii) Moripirala-Zafargad road work entrusted to M/s.Yamuna Projects Limited (hereafter called, YPL). The summary of these allegations may be noticed in brief under three headings as under.

(i) *Reponi and Khanapur Road Works*

The Superintending Engineer (SE), (Panchayat Raj), Warangal, issued tender notice dated 11.4.2002 inviting bids for package No.AP/21/11/01 under PMGSY (Prime Minister Gram Sadak Yojana

phase-II scheme) consisting of eight works at an estimated cost of Rs.141.28 lakhs. First respondent submitted tender. The same was accepted by the Chief Engineer (CE), Panchayat Raj, Hyderabad, by letter of acceptance, dated 24.5.2002. In pursuance thereof, SE on behalf of the Governor of Andhra Pradesh entered into an agreement on 23.10.2002 with first respondent. First respondent agreed for retention of two bank guarantees by Government for the purpose of performance guarantee. First respondent also agreed for withholding of 3% of the value of the work done for running Account Current (AC) bill as additional security for fulfillment of the contract as per Andhra Pradesh Detailed Standard Specifications and General Principles of Engineering Contracts (APSS), which would form part of the contract dated 23.10.2002. The package of four works is within the jurisdiction of the EE, Panchayat Raj, Mahaboobabad and four other works are within the jurisdiction of the EE, Warangal. First respondent completed the four works of Warangal division but blacktopping of Reponi road and Khanapur roads in Mahaboobabad division remained incomplete.

After he was chosen as TRS candidate for 263-Chennur Legislative Assembly constituency, first respondent suppressed about incomplete works and gave application to SE on 31.3.2004 seeking cancellation of works covered by the agreement dated 23.10.2002. This was done to get-over disqualification contemplated under Section 9-A of the Act. In pursuance of the application, SE issued proceedings in his memo dated 31.3.2004 stating that the contract is closed at the request of the contractor to enable him to contest legislative assembly general elections. The application made by first respondent is not genuine as on 31.1.2004, the question of filing nomination for the election did not arise and the said application/representation was brought into existence in connivance with the SE. The SE concerned cannot close the contract at the behest of the contractor to facilitate him to file nomination on 31.3.2004. The contract was not terminated on 31.3.2004 and the action of the SE does not amount to cancellation of the contract. Thus the contract between first respondent and Government of Andhra Pradesh is in subsistence attracting Section 9-A of the Act.

(ii) *Kakatiya canal work*:

First respondent entered into an agreement dated 28.8.2002 in relation to the works undertaken by the Irrigation and Command Area Development, Sriram Sagar Project, Stage-II. This work related to embankment of Kakatiya canal from KM 291 to 292 including structures. First respondent failed to complete the works within stipulated time and continued to execute the works till the end of March 2004 beyond the stipulated time. The contract between first

respondent and Government did not come to end.

(iii) *YPL Works*:

First respondent promoted YPL for carrying out contract works with Government. The said company entered into the contract on 20.10.2003 with Government to execute the road work from Moripirala to Zafargad from KM 2/580 to KM 16/800 at an estimated cost of Rs.1,16,44,013/-. YPL enterd into agreement with SE, Roads & Buildings, Warangal. The stamp papers used for the agreement were purchased in the name of first respondent on 20.8.2003. YPL did not complete the work and the work is going on. Earlier first respondent was Managing Director of YPL and now he is Chairman of the company.

Road work from Palakurthi – Nancharimadur, Panchayat road to Thorruru – Veligonda, PWD road via Peda Vangara from KM0/0 to KM 8/050 was also entrusted to YPL. The stamp paper for the agreement dated 16.6.2003 between the SE and YPL was purchased in the name of first respondent. YPL was also given the contract for the road work between Giripuram to Ramapuram viz Venkampad and Bavojigudem from KM 0/0 to KM 9/630 under agreement dated 12.5.2003. All the three works entrusted to YPL under contract are not completed. First respondent has been executing these works in his personal capacity as Chairman of YPL. The works were entrusted to YPL when first respondent was Managing Director. Even though the works are executed by YPL, Section 9-A of the Act is attracted because first respondent is the kingpin in incorporating YPL and he is running the company for his benefit being major beneficiary.

Pleadings in E.P.No.1 of 2004:

This petition is filed by the voter of Chennur Legislative Assembly constituency. He makes allegations in relation to the road works of Reponi and Khanapur as well as YPL works. It is not necessary again to repeat these allegations in view of the summary noticed regarding these allegations from E.P.No.3 of 2004.

Defence of first respondent:

First respondent filed written statement in E.P.No.1 of 2004 as well as in E.P.No.3 of 2004. In his written statement filed in E.P.No.1 of 2004, he admits the contract for eight package works under contract dated 23.10.2002. He also admits the contract in relation to the work of formation of embankment of Kakatiya main canal on 28.8.2002. He further admits the entrustment of contracts for road works to YPL. However first respondent denies that he incurred disqualification under Section 9-A of the Act by reason of subsisting contract entered into by him with Government. His defence on this aspect in relation to the three allegations for three different works is as follows.

(i) *Reponi and Khanapur Road Works*

First respondent entered into agreement on 23.10.2002 with the SE in respect of eight works constituting a package, but the allegations that he agreed for retention of the bank guarantee by Government, that he agreed to withhold 3% of the value of the work as additional security, that he signed APSS and that since the security deposits are not returned to him the contract in question is not terminated are incorrect and denied. First respondent executed six works out of eight works covered by the agreement dated 23.10.2002 except the road works of Reponi and Khanapur. Since he was selected as a candidate from 263-Chennur Legislative Assembly constitutency on the intervening night of 30/31.3.2004, he submitted a letter to the SE on 31.3.2004 at 10.40 am to terminate the agreement and obtained endorsement on the copy of the said letter from the SE and EE on 31.3.2004 itself. The SE immediately issued orders in his memo dated 31.3.2004 closing the contract under the said agreement and thus the agreement was terminated by mutual consent before filing the nomination on 31.3.2004 at 2.30 pm. The EEs of Warangal and Mahaboobabad were instructed to submit closing statements for the purpose of releasing the payments to first respondent. Hence the allegation that the contract was not terminated on 31.3.2004 before filing nomination is incorrect and denied.

(ii) *Kakatiya canal work*:

The work relating to formation of embankment of Kakatiya main canal including structures was completed by 25.3.2004 which was acknowledged by the EE who in turn informed the same to the SE vide letter dated 14.6.2004. Further by way of abundant caution, first respondent gave a letter to the SE, Irrigation, on 31.3.2004 at 11.00 am terminating the contract and hence the allegation that the contract has not come to an end is not correct.

(iii) *YPL works*:

The allegation that first respondent promoted YPL for the purpose of carrying out contract works with Government of Andhra Pradesh and other agency is admitted. The other allegations in paragraph-3 of E.P. are denied. The allegation that the works obtained by YPL are for the benefit of first respondent is false, incorrect and denied. The stamp papers for entering into contract with the SE, R&B for Moripirala to Zafargad road work and for entering into contracts in respect of other two works by YPL were purchased by first respondent in the capacity of Chairman and Managing Director (CMD) and not in his personal capacity. He submitted his resignation to the post of CMD of YPL. In the Board meeting held on 11.9.2003 at 11.00 am, at the Registered Office of the company at Warangal, a special resolution was passed accepting the resignation of first respondent as CMD of YPL. Smt.J.Bharathi, W/o.Sampath Rao, Director of the

company, was appointed as CMD of YPL. The Board of Directors requested one of the Directors of the company, Sri P.Ratnakara Rao, to communicate about the resolution to Government departments, financial institutions and others and also to submit the documents to all the persons dealing with Government. The resolution of the Board of Directors of YPL accepting the resignation of first respondent as CMD was informed to the Registrar of Companies (RoC). Necessary information in Form No.23 and Form No.32 under the provisions of the Companies Act, 1956 (Companies Act, for brevity), was furnished to RoC. First respondent ceased to be the CMD of YPL by 11.9.2003 and hence the allegation that he continued in the said position is not correct.

The allegations that Section 9-A of the Act is applicable as the contracts executed by YPL are for the benefit of first respondent being major beneficiary for the works carried out and that he is interested in all the contracts which are subsisting are false and denied. YPL is a legal entity and all the works undertaken by it are for the benefit of the company. The allegation that first respondent was under disqualification as the contracts for construction of roads entered into by YPL contained several incomplete works is incorrect and denied.

First respondent also filed written statement in E.P.No.1 of 2004 denying various allegations. It is however not necessary to advert to these averments as they are similar to the averments made in the written statement in E.P.No.3 of 2004.

Issues:

On 08.10.2004 this Court framed four issues in E.P.No.1 of 2004 as under.

1. Whether the contracts entered into by the respondent in the course of his business with Government of Andhra Pradesh for the execution of works undertaken by Government, were subsisting, and therefore the respondent is disqualified to be elected as Member of Legislative Assembly from 263-Chennur, A.P. Legislative Assembly constituency as per Section 9-A of Representation of People Act, 1951?
2. Whether the respondent has validly terminated the agreement No.AP21/11/01, dated 23.10.2002, on 31.3.2004 before filing nomination?
3. Whether the respondent is the Chairman and Managing Director as on the date of scrutiny of nominations and whether he was executing any contracts on behalf of M/s.Yamuna Projects Pvt. Ltd., on the date of scrutiny and if so whether he is disqualified?
4. To what relief?

This Court framed seven issues in E.P.No.3 of 2004, which are as under.

1. Whether the contracts entered into by first respondent in the course of his business with Government of Andhra Pradesh for the execution of works undertaken by Government, were subsisting, and therefore first respondent is disqualified to be elected as Member of Legislative Assembly from 263 Chennur, A.P. Legislative Assembly constitution as per Section 9-A of Representation of the People Act, 1951?
2. Whether it is not competent for the Superintending Engineer, Panchayat Raj, Warangal, to accept the termination of contract entered into by first respondent with Government of Andhra Pradesh?
3. Whether first respondent has completed the works relating to embankment of Kakatiya main canal in Agreement No.6/2002-2003 dated 28.8.2002 before the date of scrutiny?
4. Whether first respondent has validly terminated the works relating to Agreement No.6/2002-2003 dated 28.8.2002?
5. Whether the respondent is the Chairman and Managing Director as on the date of scrutiny of nominations and whether he was executing any contracts on behalf of M/s.Yamuna Projects Pvt. Ltd., on the date of scrutiny and if so whether he is disqualified?
6. Whether the petitioner is entitled for declaring him as validly elected candidate for 263 Chennur, A.P. Legislative Assembly constituency as per Section 101 of Representation of People Act, 1951?
7. To what relief?

Subsequently, Counsel for the petitioners filed E.A.Nos.1124 and 1135 of 2004 praying this Court to recast the issues. Considering these applications, on 09.11.2004, this Court recast the issues in E.P. No.3 of 2004, as under.

1. Whether the contracts entered into by first respondent in the course of his business with Government of Andhra Pradesh for the execution of works undertaken by Government, were subsisting, and therefore first respondent is disqualified to be elected as Member of Legislative Assembly from 263 Chennur, A.P. Legislative Assembly Constituency as per Section 9-A of Representation of the People Act, 1951?
2. Whether the proceedings of the Superintending Engineer, P.R. Circle, Warangal, in his Memo No.T1/PMGSY/PH-II/AP.21/11/01/ 2004, dated 31.3.2004 amounts to valid termination of the contract entered into by first respondent with Government of Andhra Pradesh?
3. Whether first respondent has completed the works relating to embankment of Kakitya main canal in Agreement No.6/2002-2003 dated 28.8.2002 before the date of scrutiny?
4. Whether first respondent has validly terminated the works relating to embankment of Kakatiya Main Canal in Agreement No.6/2002-2003 dated 28.8.2002?

5. Whether the respondent is having substantial interest in the three works under execution by M/s.Yamuna Projects Pvt. Ltd., and thereby incurred disqualification under Section 9-A of the Representation of the People Act, 1951?
6. Whether the petitioner is entitled for declaring him as validly elected candidate for 263 Chennur, A.P. Legislative Assembly constituency as per Section 101 of Representation of People Act, 1951?
7. To what relief?

During trial, petitioner in E.P.No.3 of 2004 examined himself as P.W.1. The petitioner in E.P.No.1 of 2004 deposed as P.W.2. P.W.3 is the then CE, Panchayat Raj. P.W.4 is the then SE. P.W.5 is the then EE, Mahaboobabad. The SE, R&B deposed as P.W.6 and produced two agreements executed by YPL in relation to separate works. Be it noted that P.Ws.3 to 6 were summoned by the petitioner to give evidence and also to produce documents. Petitioners also marked Exs.A.1 to A.35. First respondent Dr.Dugyala Srinivasa Rao examined himself as R.W.1 and marked Ex.B.1, which is the copy of the Minutes of the Board meeting of YPL. Documents summoned and produced by P.W.6 are marked as Exs.X.1 to X.6.

Issues 1 & 2

Issues 1 and 2 raise two questions, namely, whether contract entered into by first respondent in relation to package works was subsisting and therefore he was disqualified to be elected as MLA and whether proceedings of the SE dated 31.3.2004 amounts to valid termination of the contract entered into by first respondent.

Whether contract of first respondent for execution of works undertaken by Government was subsisting as on the date fixed for scrutiny of nominations i.e., 02.4.2004. That first respondent was entrusted with PMGSY Phase-II package works covered by Ex.A.4 contract and that he executed six works out of eight works, is not denied. That two works in Mahabubabad division within the jurisdiction of P.W.5 were incomplete as on 31.3.2004 is also not denied. Indeed in written statement, first respondent admits that two works, namely, Reponi and Khanapur road works were incomplete as blacktopping was not done as on 31.3.2004, last date for filing nominations. It is also admitted that first respondent submitted a letter on 31.3.2004 to SE (PW.4) and he issued proceedings, which is also not seriously disputed by the petitioners. Here it may be noticed that pursuant to the letter of first respondent (Ex.A.18), P.W.4 issued proceedings informing first respondent that package work is closed. This letter is found in the original file of P.W.4, which is marked as Ex.A.17. On the same day, P.W.4 also sent a communication to P.W.5 (EE, Panchayat Raj, Mahabubabad) as well as EE, Warangal,

informing them about the closure of the work and asking them to submit closing statements of the work. This memo dated 31.3.2004 is marked as Ex.A.3/ A.20 (which is also found at page No.43 of Ex.A.17). In Ex.A.3/A.20, in the reference entry, representation of first respondent is mentioned as dated 31.1.2004. Learned Counsel appearing for both the parties admit that it is a mistake and that first respondent made an application on 31.3.2004 only, seeking cancellation of all package works.

Learned Senior Counsel for the petitioners in both the election petitions, Sri M.R.K. Choudary, refers to the evidence of P.W.1, as well as Ex.A.18, Ex.A.3/A.20 and various documents in Ex.A.17 file, and contends that Ex.A.3 issued by P.W.4 does not amount to termination of contract concerned by Ex.A.4 and that it does not evidence closure of contract. According to learned Senior Counsel, Ex.A.3 only discloses the intention to close the contract as per departmental norms and *per se* does not result in closure of the contract. It is also his submission that closure does not amount to cancellation of contract and therefore the contract for execution of work between first respondent and Government must be deemed to be subsisting as on 02.4.2004. Attention of this Court is invited to decisions in **Abdul Rahiman v Sadasiva**[1], **Konappa v Vishwanath**[2], **Munishamappa v Venkatarayappa**[3], **Sewaram v Sobaram Singh**[4], **Shibu Soren v Dayanand Sahay**[5], **Prakash Khandre v Dr.Vijay Kumar Khandre**[6], **Rajashekar Basavaraja Patil v Subash Kaliar**[7], **Dale & Carrington Invt. (P) Ltd v P.K.Prathapan**[8] and **Shrikant v Vasantrao**[9] On this aspect, alternative submission of the learned Senior Counsel is that if Ex.A.3 is treated as termination of contract, P.W.4 is not competent to terminate the contract and power to enter into contract does not include power to terminate the contract. According to learned Senior Counsel, P.W.4 has no power either to accept or terminate the contract and that he is only authorized to sign the contract on behalf of Government. Therefore, it is urged, the termination of contract as alleged by first respondent is not in accordance with Article 299(1) of the Constitution of India (Constitution). In this regard, reliance is placed on **State of West Bengal v B.K.Mondal**[10], **Karamshi v State of Bombay**[11], **Bihar E.G.F Coop Socy. v Sipahi Singh**[12] and **State of Punjab v Om Prakash Baldev Krishan**[13]. Learned Senior Counsel also relies on Andhra Pradesh Standard Specifications (APSS) and executive

instructions issued in paragraph 159 of Andhra Pradesh Public Works Department Code (PWD Code, for brevity).

Learned Senior Counsel for first respondent, Sri M.Chandrasekhar Rao, made submissions to the following effect. The election petition does not disclose material facts as required under Section 83(1)(a) of the Act and therefore petition has to be dismissed as required under Order VII Rule 11(a) of Code of Civil Procedure, 1908 (CPC). He relies on **Samant N.Balakrishna v George Fernandez**[14], **Charan Lal Sahu v Giani Zail Singh**[15], **Dhartipakar Madanlal Agarwal v Rajiv Gandhi**[16] and **Santosh Yadav v Narender Singh**[17]**.** He nextly contends that the contract between Government and first respondent was terminated on 31.3.2004 and it was not subsisting as on the date of scrutiny of nominations. He invites attention of this Court to a letter of first respondent, Ex.A.19 (original is Ex.A.18), in response to which orders were passed by P.W.4. He also invites the attention of this Court to Ex.A.17 File and evidence of P.Ws.1, 3, 4 and R.W.1, to contend P.W.3 and P.W.4 do not dispute about the termination of the contract with reference to Ex.A.17-A (note file of Ex.A.17) and therefore evidence of P.W.1, who had no knowledge about cancellation of contract, cannot be given much weight, when P.W.3 admits that contract was terminated/closed. He would urge that Court has to read relevant documents keeping in view the intention of the parties. First respondent submitted an application seeking cancellation of the contract as he was selected as a candidate of TRS for Chennur constituency and accordingly P.W.4 closed the contract and directed P.W.5 and another to submit closure statements. Though Exs.A.3, A.19, A.20 and A.28 used the terminology, “the contract is closed”, it is the intention of the parties to terminate the contract. He has invited attention of this Court to page No.43 of Ex.A.17 File, by which P.W.4 informed first respondent that the contract is closed to enable him to contest Legislative Assembly General Elections 2004. He relies on Black’s Law Dictionary, Chitty on Contracts and Chambers Dictionary and Ramnath Iyer’s Law Lexicon. Reliance is also placed on **Munishamappa** (supra), **Aslhing v L.S.John**[18], **Prakash Khandre** (supra) and **Rajashekar Basavaraja Patil** (supra).

Learned Counsel would urge that SE is competent to terminate the contract. According to him, authority to enter into contract has implied power to impose penalty, extend time and terminate the contract. He submits that in the absence of any authorization to any other authority, authorisation given to SE to enter into contract also

includes the power to terminate contract. He contends that the petitioner has not pleaded any material fact regarding competency of the SE to terminate the contract and in the absence of such specific pleading, evidence cannot be looked into. Alternatively he submits that action of the SE, who is competent to terminate the contract, was also ratified by the CE and such ratification dates back to 31.3.2004. Placing reliance on **Samant N. Balakrishna** (supra) and **Santosh Yadav** (supra), he contends that in the absence of concise statement of material facts petitioner cannot be allowed to agitate the issue. Reliance is also placed in support of the proposition on **Rajashekar Basavaraj Patil** (supra). Lastly, he submits that at the time of filing of nominations or the scrutiny of nominations petitioners in both the petitions never raised any objection and in the absence of the same, their case would be weakened. On this aspect, he relies on **Ganpat v Returning Officer**[19].

The parties to a contract must perform their respective promises unless such party is excused under the provisions of the Indian Contract Act, 1872 (Contract Act, for brevity) or any other law. Contract must be said to subsist if a portion of the same is required to be performed at any time and as long as it remains incomplete. If a party to the contract fails to perform his promise, the contract does not come to an end, the other party can seek remedies for breach of contract. Further, a contract can be terminated by mutual consent of the parties, by efflux of time or by termination as provided in the contract. If a contract is impossible of its performance, it is also deemed to have been terminated. In this case, we are concerned with the termination of the contract Ex.A.4 (agreement between first respondent and Government in respect of package works), which according to first respondent was terminated/cancelled by mutual consent. What are the tests to determine whether there is termination of contract by mutual consent?

The analysis of the cases cited by the Counsel would show that possibly there can be explicit termination of contract, which may be called “intention test” and implied termination of contract, which may be called “conduct test”. By express intention parties to the contract agree to bring the contract to an end in which event without anything else the contract stands terminated or cancelled. There could be cases where for various reasons the parties to the contract reach a stage of “stand still” in the performance of promises and neither party proceeds against the other and by their conduct give a go-bye to the parties of the contract. When mutual promises under contract are fully performed to the satisfaction of other, contract comes to an end and terminated. This is “performance test”. In **Abdul Rahiman** (supra), the

Supreme Court was dealing with a case of proprietary concern engaged in the business of building contracts. He contested to Legislative Assembly of Orissa from Naurangapur. His nomination was rejected on the ground that he incurred disqualification under Section 9-A of the Act as it stood then. He filed the election petition before High Court of Orissa contending that he carried out part of the construction work but thereafter stopped work due to health problems and that on his request contract was cancelled. Evidence was let in to show that the EE had intention to terminate the contract and was willing to accept the offer of cancellation and made cancellation in that behalf. The case was dismissed in the High Court. The Supreme Court, on appreciation of the evidence, found that, "there is a mass of evidence on record which shows that no steps were taken to intimate the appellant about the termination of the contracts and both parties treated contract as subsisting". It was then observed as under.

> … … the appellant requested cancellation of the contract. The Executive Engineer was willing to accept the offer of cancellation and made an endorsement in that behalf, but nothing was done thereafter. Harihar Bisoi was apparently asked to take up the work "at the current schedule of rates," but even thereafter the contract with the appellant was not treated as cancelled… …
>
> … … **It is true that by virtue of the Explanation to Section 9-A of the Representation of the People Act, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact, that Government has not performed its part of the contract either wholly or in part. In the present case the contract was not wholly performed by the appellant, and unless he had completed the contract or showed that there was determination by mutual assent of the contract, the appellant cannot claim that there was no subsisting contract at the date of the filing of the nomination paper.** By letter written by the appellant on July 22, 1966, Ext. C, the appellant made a request for extension of time by six months to enable him to complete the work and by his letter Ext. D dated December 20, 1966 he requested the Superintending Engineer not to cancel the contract or call for new tenders. **This conduct of the appellant clearly suggests that he did not treat the contract as cancelled, nor is there any clear evidence to show that the authorities had treated the contract as cancelled**.
>
> (emphasis supplied)

In **Konappa** (supra), which is a case of partnership firm, respondent was a partner of construction firm having two contracts with Mysore Government. His election was upheld by the High Court of Mysore rejecting the plea of appellant that the respondent incurred disqualification under Section 9-A of the Act. The case was that items 8 to 12 (out of total 12 works) remained to be completed. Evidence

was let in which consisted of documents from PWD and the oral testimony of engineers, who are in-charge of the construction. High Court of Mysore dismissed the election petition. Before the Supreme Court the question was whether strict view or sensible view of Section 9-A of the Act has to be taken while examining the disqualification under Section 9-A of the Act. The Apex Court leaned in favour of sensible view and held as under.

> The later certificates clearly show that certain parts of the work remained to be completed and they certainly were overlooked when the first certificate was given. That they were minor items is not much to the purpose. The contracts as such were not fully performed. Although we were hesitating whether to apply the *de minimis* rule to this case we think that there are other considerations why we should refrain from applying that rule. We make our position clear. **If the work is completed, it would not mean that the contract is subsisting**, if, say, a glass pane is found broken or a tower bolt or a drop bolt or a handle has not been fixed where it should have been. **The law is not so strict as all that and a sensible view of the section 9-A will have to be taken. The right of a person to stand for an election is a valuable right just as a right of a person to vote was considered a valuable right in the leading case of *Ashby* v. *White*** {(1703) 2 Ld Rayam 938 = 1 ER 417}. But if the contract subsists in such manner that it cannot be said to have been substantially completed, the law must take its own course. It is of the essence of the law of elections that candidates must be free to perform their duties without any personal motives being attributed to them. A contractor who is still holding a contract with Government is considered disqualified, because he is in a position after successful election to get concession for himself in the performance of his contract. That he may not do so is not relevant. The possibility being there, the law regards it necessary to keep him out of the elections altogether. But as we stated, this will be only where the contract has not been fully performed, although what is full performance of a contract or completion, is a matter on which we do not wish to express a final opinion in this case, because it depends on the circumstances of each case and more particularly because there is here another condition to which we have referred.
>
> (emphasis supplied)

In **Sewaram** (supra), which is also a case of partnership firm, appellant's election was successfully challenged before High Court of Madhya Pradesh on the ground of Section 9-A of the Act, disqualification. So as to contest the election – he urged; he decided to retire from firm and make alternative arrangements with another contractor. On such retirement fresh partnership was entered into and that there was no contract subsisting on the date of election. As a fact, it was found that the contract with the firm of Sewaram was not

terminated but he continued with the contract through proxy of his real brother. Considering this aspect of the matter, the Supreme Court dismissed the appeal observing as under.

> Admittedly the firm M/s Sewaram Gupta itself came into existence in 1988 and the contract made originally in favour of Sewaram in his individual capacity could not have been assigned or transferred in favour of the firm without the consent of the Divisional Officer. Even otherwise, there is nothing on record to show that at any time during the subsistence of this contract Sewaram had ever intimated the PWD that the contract may be transferred or assigned in favour of the firm nor any correspondence ever shows that the PWD had accepted such transfer or assignment impliedly or expressly in favour of the firm M/s Sewaram Gupta. Thus, it is established beyond any manner of doubt that till February 1, 1990 the date of filing the nomination paper, the contract with PWD was continuing and dealt with Sewaram in his individual capacity and not with the firm Sewaram Gupta. The appellant has taken the stand that an agreement was executed between him and Patiram on December 31, 1989 by which he gave up his interest in the existing contract with PWD and MPAKVN and executed another document on the same day dissolving the partnership firm and a new partnership deed was executed on the same date between Patiram and other persons.

In **Munishamappa** (supra), the Court was concerned with the question whether the appellant had contract subsisting with Government to disqualify him from contesting election. Incidentally the Court also considered whether the breach of contract amounted to termination of the contract. On appreciating the material, the Apex Court came to the conclusion that the appellant completed all items of work except three minor items and was prepared to complete the work by November 1977 but he was asked not to proceed with the remaining works till the monsoon is over and the appellant had refused to do so. It was also found that there was arrangement between the appellant and State Government, that the State Government would get the works done by other contractors and that there was an intention between the parties to put an end to the contract, as the appellant intended to contest the election and to enable him to do so, he wanted to have the contract cancelled immediately and his bill settled. After accepting the letter, Government also did not proceed against him and remaining works had been completed by the other contractors. Apart from this, the breach of contract also amounted to putting an end to the contract. The reasoning of the Court is as under.

> In any event, if the contract had not been terminated by the parties themselves, it appears that the appellant must be held to be in clear breach of the agreement long before the

date he had filed his nomination paper. **Execution of the work in terms of the contract was undoubtedly one of the fundamental terms of the contract and the appellant had failed or refused to do so. Even if it be held that the appellant had committed a breach of the contract, the contract cannot be laid to be subsisting thereafter. If the contract is discharged by breach on the part of the appellant, the entire contract necessarily goes and along with this the agreement, if there be any, with regard to the maintenance, must necessarily go, leaving the party aggrieved to take steps to recover damages for such breach. The contract, however cannot be said to be subsisting**. In the view that we have taken, it does not, indeed, become necessary for us to consider the question whether the maintenance clause in the instant case formed a part of the contract or not. We must, therefore, hold that in the instant case, there was no subsisting contract between the appellant and the State Government at the date of his filing the nomination for election. **The fact that the bills of the appellant were settled at a later date and that the security deposit was refunded later on, will not disqualify the appellant in view of the explanation to Section 9-A of the Act**. We are, therefore, of the opinion that the finding of the High Court that the appellant was disqualified in view of the provisions contained in Section 9-A of the Act, is not correct.

(emphasis supplied)

I n **Prakash Khandre** (supra), on which both the Counsel placed strong reliance; their Lordships after considering Section 7(d) of the Act as it stood before the amendment by Central Act No.47 of 1966 and Section 9-A of the Act (which replaced old provision) observed that, "Section 7(d) was very wide and that a person having share or interest in contract or such person having interest by any person in trust for him or for his benefit or on his own account was disqualified to contest election." Their Lordships further observed that, "the disqualification was narrowed down in 1958 by an amendment and thereafter Section 9-A was substituted." After noticing the objects and reasons for such substitution, the apex Court observed as under.

> From the aforequoted objects and reasons of substituting Section 9-A, it is clear that **an unduly strict view about Government contract in the present day is not required to be taken and the change became necessary in order to do away with the disqualification that attaches to a person for being chosen as or for being a Member of Parliament or State Legislature even after he has fully performed his part of the contract**……
>
> ……. Further, initially Section 7(*d*) was very wide. A person having any share or interest in contract or such person having interest by any person in trust for him or for his benefit or on his own account was disqualified to contest election. This disqualification was narrowed down in 1958. Thereafter in 1966, Section 9-A was substituted, which provides that the person shall be disqualified—

(a) if and for so long as there subsists a contract by him in course of his trade or business;
(*b*) for the supply of goods to; or
(*c*) for the execution of any work undertaken by him.

The Explanation further provides that where the contract has been fully performed by the person by whom it has been entered into the contract shall be deemed not to subsist by reason only of the fact that Government has not performed its part of the contract either wholly or in part. This Explanation is added to clarify that mere non-performance on the part of Government, say non-payment of money would not be deemed to mean that the contract subsists even though the contract has been fully performed by such person.

(emphasis supplied)

It was also held therein that, if the evidence and correspondence produced by the parties show that the parties to the contract terminated contract and brought it to an end, disqualification under Section 9-A of the Act is not attracted. The test is whether the parties brought contract to an end. It is thus very clear that whenever an election is challenged on the ground that elected candidate incurred disqualification under Section 9-A of the Act, Court has to take a sensible view and not an unduly strict view about Government contract. The test to be applied is whether there was termination of contract by express intention of the parties or whether after such termination by conduct they put an end to the contract.

As observed at the outset first respondent was having a subsisting contract for execution of works as on 31.3.2004. He admits about this in his evidence as R.W.1. He however asserts that the contract between him and Government was terminated, which is now – to reiterate – is challenged on the ground that there was no termination and that P.W.4 was not competent to terminate the contract. First aspect of this is challenged regarding the alleged termination of contract by P.W.4. Learned Counsel for both the parties rely more on the documentary evidence. P.Ws.3 to 6 essentially depose only about these documents. Applying the intention test and/or conduct test, it is to be seen whether it is possible to come to a conclusion that there was no valid termination of the contract. All these documents are contained in Ex.A.17 file, some of which are also marked separately during the trial. The documents, Exs.A.18/A.19 and the unmarked document at page No.43 of Ex.A.17 File, are very much relevant for knowing the intention of the parties. The documents marked as Exs.A.14/A.21, Ex.A.3/A.20, Ex.A.28 and
Ex.A.28(a), which are contemporaneous, came into existence on 31.3.2004 also throw light on the intention of the parties to terminate the contract by mutual consent. It is necessary to refer all these

documents, (emphasis is supplied wherever necessary).

(copy of the letter of the contractor dated 31.3.04 – Ex.A.18/A.19)

To
The Superintending Engineer,
Panchayat Raj Circle,
Warangal.

Sir, Sub**: Cancellation of works** allotted – req – reg.

Ref: Package No.AP21/11/01-8 works Agmt.No.A2002-03,
Dt.23.10.02.

***

With reference cited subject above, I submit that, I have been declared as candidate from Chennur Constituency of Warangal District by TRS party, and I have decided to file nomination on 31.3.2004.

Hence kindly **request you to cancel the above mentioned work** and other works in the division/circle agreements, with immediate effect and kindly arrange further payment of the works already completed by me.

I further undertake to abide by all rules and regulations of your department in this regard.

Thanking you Sir,

Yours faithfully,
Sd/- xxx xxx
(D.SRINIVASA RAO)

(copy of Proceedings No.T1/PMGSY/AP.21/II/01/04, dated 31.3.2004 – Ex.A.3/A.20)

Government of Andhra Pradesh
Panchayat Raj Engineering Department

Proceedings of the Superintending Engineer, PR Circle, Warangal
Present: B.Shyam Babu, M.Tech.,

Sub: PR Circle, Warangal – PMGSY Phase-II –AP.21/II Package **– Closing of contract** – Orders – Issued.

Ref: Representation of the contractor, Sri D.Srinivasa Rao,
Dated 31.3.2004.

***

The contract for the work Package No.AP.21/II/01/04 construction of 8 road works in Chennur Constituency sanctioned under PMGSY Phase-II programme is **hereby closed to enable him to contest as the Legislator of Assembly General Elections 2004**.

Sd/- xxx xxx
Superintending Engineer,
PR Circle, Warangal.

To
Sri D.Srinivasa Rao,
Special Class Contractor,
House No.2-6-33, TB Road,
Near Government Guest House,
Hanamkonda.

(copy of Proceedings No.T1/PMGSY/Ph.II/AP.21/II/01/2004, dated 31.3.2004 – Ex.A.28)

Office of the Superintending Engineer,
Panchayat Raj Circle, Warangal

Sub: PR Circle, Warangal – PMGSY Phase-II –AP.21/II Package – **Closing of agreement** – Regarding.

Ref: Representation of the contractor, Sri D.Srinivasa Rao,
Dated 31.1.2004.

***

The contract AP.21/II/01/04 package under PMGSY Phase-II programme **is closed on the request of the contractor** Sri D. Srinivasa Rao to enable him to contest as the Legislator of Assembly General Elections.

The Executive Engineer, PR, Warangal/Executive Engineer, PR, Mahabubabad are **instructed to submit the closing statement of the work**. The action will be taken as per departmental norms in force.

Sd/- xxx xxx
Superintending Engineer,
PR Circle, Warangal.

To
The Executive Engineers, PR, Warangal
The Executive Engineers, PR, Mahabubabad

[Copy of Endt.No.B/PMGSY-II/04, dated 13-4-2004 – Ex.A.28(a)]

Copy communicated to DEE, PR, Thorrur with instruction to submit the closing statement of the works of PMGSY-II pertaining to Sri D.Srinivasa Rao urgently.

Sd/- xx
13.5.2004
Executive Engineer,
P.Raj Divn., Mahabubabad.

To
The DEE, PR,
Thorrur

(copy of Lr. No.T1/PMGSY/AP.21/II/01/Contract, dated 31.3.2004 – Ex.A.14/A.21)

Office of the Superintending Engineer,
Panchayat Raj Circle, Warangal

From
Sri B.Shyam Babu, M.Tech.,
Superintending Engineer,
PR Circle, Warangal

To
The Chief Engineer,
PR,
Hyderabad.

Sir,

Sub: PR Circle, Warangal – PMGSY Phase-II – **Package No.AP.21/II/01 Contract – Closed – Ratification** – Requested -Regarding.

Ref: Representation of the contractor dated 31.1.2004.

2. This office Memo.No.T1/PMGSY/Phase-II/AP21II01/04

dated 31.3.2004.

***

I submit that through the above reference 1st cited the **contractor Sri D.Srinivas Rao has requested to cancel the agreement**, stating that he is contesting the Legislature of Assembly Chennur Constitutency.

Through above reference 2nd cited, **the contract of the package AP21II01 has been closed to enable him to contest to the Legislature of Assembly general elections** of Chennur constituency and instructed the Executive Engineers concerned to submit the balance work estimates.

I therefore request the Chief Engineer, PR, Hyderabad to ratify the action taken by the Superintending Engineer, PR Circle, Warangal in the above regard.

Sd/- Superintending Engineer,
PR Circle, Warangal.

Apart from the above documents, relevant note orders in Ex.A.17(a) (Note file of Ex.A.17 file) are also relevant to which a reference is made at appropriate places.

First respondent was selected as TRS candidate on the intervening night of 30/31.3.2004 to contest 2004 General Assembly Elections from 263-Chennur Assembly constituency. As deposed by R.W.1, on 31.3.2004 he personally went to the office of P.W.4 and submitted Ex.A.18 at 10.40am. In this letter while informing that he has been declared as a candidate and that he has to file nomination on 13.3.2004, he requested P.W.4 to cancel the package works covered by Ex.A.14. In the subject column of this letter, he speaks about cancellation of works allotted and even in the letter he requested for cancellation of the work. After receiving Ex.A.18/A.19, the Officer instructed Additional Executive Engineer (AEE) to put up the papers duly endorsing on Ex.A.18. On the same day, an office note was put up in the file by AEE. This note at pp.6- 7 of Ex.A.17(a), reads as under.

Submitted Sir,

Ref: Representation of the Contractor, Sri D.Srinivasarao,

Dated 31.3.2004.

***

Kindly peruse the above ref 1 cited, where in the contractor Sri D.Srinivsa Rao had stated that he had decided to file nomination on 31.3.2004 and **requested to cancel the work of AP21/II/01**, 8 works with immediate effect.

As such **if agreed, the contract may be cancelled giving instructions to EEs of this work to effect the recoveries as per departmental norms**.

Submitted for perusal and orders.

The note was approved by P.W.4 and thereafter AEE appears to have put up two draft proceedings, one addressed to R.W.1 and another addressed to P.W.5 and another EE. Thereafter another draft letter was put up addressing to PW.3. These letters are Exs.A.3/A.20 and A.14/A.21. The note put up by AEE, which is at page 7 of Ex.A.17(a) reads as under.

Submitted Sir,

A **draft proceedings of cancellation of contract and draft memo addressing the EE**, PR, Warangal/Mahabubabad informing cancellation of contract AP.21/II/08 package and instructing to effect the recoveries as per departmental norms and to submit the closing statement of the work, is put up for perusal and approval.

Submitted Sir,

A draft letter addressing the CE, PR, Hyderabad requesting to ratify the action taken by this office is put up for perusal and approval.

R.W.1 requested for cancellation of the contract. The office of P.W.4 also put up a note for orders as to cancellation. Such orders were passed in the note file. Thereafter formal proceedings dated 31.3.2004 addressed to R.W.1 were issued. In this proceedings, available at page 43 of Ex.A.17 File – extracted above, in the subject column as well as in the body of the letter the words “closure of contract” and “contract … … … is hereby closed” are used. The works were closed as per this enabling R.W.1 to contest the Legislative Assembly General Elections 2004. From this correspondence the only inference that can be drawn is that with an intention to contest 2004 General Assembly Elections, R.W.1 approached P.W.4 and requested for cancellation of the works and the latter issued proceedings closing the works. R.W.1 used the word “cancellation”, and in his proceedings P.W.4 also used the word “closed”. Thus the intention of both the parties to the contract was to put an end to the contract.

The submission that cancellation or closure does not amount to termination of the contract cannot be accepted for reasons more than one. If there was no termination by proceedings issued to R.W.1, there would not have been any necessity for P.W.4 to send communication (Ex.A.3/A.20) to EE, PR, Warangal, and EE, PR, Mahabubabad

(P.W.5) asking them to submit closing statements of the work. Furthermore on the same day P.W.4 also addressed a letter to P.W.3 informing that R.W.1 requested to cancel the agreement and that by a memo dated 31.3.2004, Ex.A.4 contract for package works was closed. P.W.3 and P.W.4 in their evidence deposed that the agreement, Ex.A.4, was entered into by the SE with R.W.1 and that he is competent to cancel the same. P.W.4 further gave evidence to the effect that though there is no provision for seeking ratification when SE closes the contract, he asked for ratification to safeguard himself in the event of contravention of any departmental procedure. Thus it must be held that the contract between R.W.1 and Government was closed by 31.3.2004 by mutual consent of the parties to put an end to contract.

The conclusion as above is also supported by other documents, which came into existence after 31.3.2004. These documents in chronological order are Exs.A.29 dated 06.4.2004, A.30 dated 22.6.2004, A.9/A.27 dated 28.8.2004, A.25 dated 25.11.2004, A.26 dated 29.1.2005 as well as other documents in Ex.A.17 File. It is the evidence of P.W.5, EE, Mahabubabad, in whose jurisdiction Khanapur and Reponi road works fall, that he received telephonic instructions from P.W.4 on 31.3.2004. Be it noted P.W.5 also sent a copy of Ex.A.28 by endorsement (Ex.A.28-A) dated 13.4.2004 below Ex.A.28 as he received the communication on that day. Immediately after receiving telephonic instructions, he instructed Deputy EE (DEE), Thorrur, to close the works. Five days thereafter DEE sent Ex.A.29 report, which reads as under.

(copy of Lr.No.1/DB/PMGSY/2002-3, dated 6.4.2004 – Ex.A.29)

From
Sri Khaja Nazeeruddin,
Engineer,
Dy. Executive Engineer,
P.R.S.D., Thorrur

To
The Executive
P.R. Division,
Mahaboobabad.

Sir,

Sub:PMGSY Phase-II – Package No.AP.21/II/01 (8) works Submission of closing bills along with balance work estimated – Regarding.

Ref:

***

With reference to the subject cited above, I su;bmit that the contractor Sri D.Srinivasa Rao was awarded the above works. Out of the above 8 works 4 works falls under PR Subdivision, Thorrur.

Vide the reference cited above the Superintending Engineer, PR Circle, Warangal, has instructed to submit the closing bills along with balance work estimates as the contractor Sri D.Srinivasa Rao has given application for closing of the works as he is contesting assembly elections.

Accordingly I am herewith submitting the closing bills

and balance work estimates as given below.

1. R/F PWD Road to Polepally – **closed**
2. R/F PWD Road to Velikatta – **closed**
3. R/F PWD Road to **Khanapur has been closed to the extent of work done** and balance work estimate is prepared for laying B.T
4. R/F PWD Road Kummarikunta to **Reponi has been closed to the extent of work done** and balance work estimate is prepared for laying of B.T.

The M.books and closing bills and closing reports along with balance work estimate are herewith submitted for favour of further necessary action.

Yours faithfully,
Sd/- xxx xxx
Deputy Executive Engineer,
Panchayat Raj Sub Division, Thorrur.

Enclosed

1. M.b.No.528/A/00-01
2. M.b.No.439/B/00-01
3. M.b.No.529/A/00-01
4. M.b.No.521/A/00-01
5. M.b.No.372/B/02-03
6. M.b.No.538/A/00-01

Closing bills with balance work estimates.

The above document belies any contention that the closure of the work does not amount to termination of contract. As seen from Ex.A.29, DEE used the term/work "closed" even in relation to works, which were completed. Therefore as rightly pointed out by learned Counsel for first respondent the closure of work amounts to termination of the contract either by mutual consent or by performance of mutual promises. After receiving Ex.A.29 along with closing statements, P.W.5 sent Ex.A.30 communication dated 22.6.2004 to P.W.4 for further action. In response to which P.W.4 sent a report to P.W.3 vide letter dated 04.8.2004, which is found at page-45 of Ex.A.17 File. The same reads as under.

(copy of Lr.No.T1/PMGSY/AP.21/II/01/Contract, dated 4.8.2004)

Office of the Superintending Engineer,
Panchayat Raj Circle, Warangal

From
Sri B.Shyam Babu, M.Tech.,
Superintending Engineer,
PR Circle, Warangal

To
The Chief Engineer,
Panchayat Raj,
Hyderabad.

Sir,

Sub: PR Circle, Warangal – PMGSY Phase-II – AP.21/II/01
Package – **Contract closed** – Clarifications requested -
Regarding.

Ref: Representation of the contractor Sri D.Srinivasa Rao,
dated 31.1.2004.
2. T/o M.No.T1/PMGSY/Phase-II/AP21II01/04, dated 31.3.2004.
3. T/o Lr.No.T1/PMGSY/Phase-II/AP21/II/01/Contract, dated 31.3.2004 addressed to CE, PR Hyd.
4. EE PR Warangal Lr.No.DB/D2/PMGSY/2004, DT.8.7.2004.
5. EE, PR Mah'bad Lr.No.B1/PMGSY-II/04, dt.22.6.2004.

***

I submit that, the work AP 21/II/01 package consisting of (8) Upgradation road works was entrusted to Sri D.Srinivasa Rao, Contractor, Hanamkonda on 23.10.2002 with a original contract amount of Rs.1,37,25,530=31 and (6) months agreement period and (5) years maintenance period.

Out of (8) works, (6) works completed to B.T standards and (2) works namely 1) R/F PWD road to Khanapur 2) R/F R&B road to Reponi are incomplete and B.T to be laid. The Contractor Sri D.Srinivas Rao vide above reference 1st cited had requested to cancel the agreement stating that he is contesting Legislature of assembly general elections 2004 from Chennur constituency.

The contract of the work AP 21/II/01 package has been closed vide above reference 2nd to enable him to contest the Legislature of assembly general elections.

The work done amount of the work PWD road Kummarikunta to Reponi Rs.19.51 lakhs and work to be done is 3.77 lakhs (as per original estimate rates).

The work done amount of the work PWD road to Khanapur is Rs.9.00 lakhs and work to be done is 3.48 lakhs (as per original estimate rates).

For execution of the balance (2) works, the laying of BT to be taken up as per 60a clause of APDSS or tender to be called for so that the work will be completed to the standards of B.T.

I therefore request the Chief Engineer, PR, Hyderabad to kindly issue necessary instructions in the above regard.

Yours faithfully,
Sd/- xxx xxx
Superintending Engineer,
PR Circle, Warangal.

After receiving the report from P.W.4 as above P.W.3 issued memo dated 28.8.2004. The same reads as under.

(copy of Memo No.W15/DEE2/PMGSY/PH-II/AP2101/WGL/2002, dated 28.8.2004 – Ex.A.9/A.27)

Government of Andhra Pradesh

Office of the Chief Engineer, Panchayat Raj, Hyderabad

Sub: Warangal – PMGSY Phase-II – AP 21/II/01 – **Contract**
closed – Necessary instructions issued – Reg.

Ref: 1. Lr.No.T1/PMGSY AP.21/II/01/2004 dt.4.8.04 of Superintending Engineer (PR), Warangal.

***

With reference to the letter cited, the Superintending Engineer (PR), Warangal, is instructed to close the work as per norms submitting the closing report along with balance work estimate per relevant SSR for approval from competent authority as per departmental norms and the balance work may be entrusted as per rules and as per the APDSS relevant clause, as the balance work, excess cost if any, is to be got executed at the cost and risk of earlier contractor and submit a detailed report on the works.

Sd/- A.Jagannadham
Chief Engineer, PR,Hyderabad.

To
The Superintending Engineer, PR, Warangal.
//t.c.f.b.o.//

Sd/- xxx
xxx
Dy.Executive
Engineer

Thereafter P.W.4 sent a letter dated 14.9.2004 to P.W.3 informing that the contract of package works was already closed on 31.3.2004 on the request of R.W.1 to enable him to contest 2004 General Assembly Elections and sought approval for package closing statement. This was presumably done because Ex.A.9/A.27 was sent by P.W.3 under an impression that work was not already closed and closing statement was not submitted, which was in fact already sent earlier vide letter dated 04.8.2004. Be that as it is, accepting the request of P.W.4, P.W.3 issued Ex.A.25 dated 24.11.2004, which reads as under.

(copy of Memo No.W15/DEE2/PMGSY/PH-II/AP2101/WGL/ 2002, dated 24.11.2004 – Ex.A.25)

Government of Andhra Pradesh

Office of the Chief Engineer, Panchayat Raj, Hyderabad

Sub: PMGSY Phase-II – AP 21/II/01 – **Contract closed** –
Necessary instructions issued – Reg.

Ref: 1. Lr.No.T1/PMGSY AP.21/II/01/2004 dt.4.8.04 of
Superintending Engineer (PR), Warangal.
2. Lr.No.T1/PMGSY AP 21/II/01/2004 dt. .9.04 of
Superintending Engineer (PR), Warangal.
3. T/o Memo even dated 28.8.04 * 29.9.04.

***

With reference to the letter cited, the Superintending Engineer (PR) is requested to take action on the Package No.AP21/II/01 under clause 61 of APDSS/Agreement and take up the balance works as per the clause and conditions of the agreement, and submit a detailed report on the action taken on the matter and proposed plan of action to complete the balance works.

Sd/- G.Krishnamurthy,
Chief Engineer, PR, Hyderabad.

To

The Superintending Engineer, PR, Warangal.
//t.c.f.b.o.//
Sd/- xxx xxx
Dy.Executive Engineer

As seen from the above P.W.3 instructed P.W.4 to take action under clause (PS) 61 of APSS and take up the balance works. This was also endorsed to P.W.5 by P.W.4 requesting the former to take action under clause (PS) 61 of APSS. Thus documentary evidence, which came into existence after 31.3.2004 clinchingly shows that the parties to Ex.A.4 package contract, closed/terminated the contract by mutual consent. Subsequent to 31.3.2004, the conduct of P.Ws.3, 4, 5 and R.W.1 does not even remotely suggest that the contract was subsisting between Government and R.W.1. The submission of petitioners that even after 31.3.2003 contract is subsisting, cannot be accepted for further reasons in ensuing paragraph.

There is no dispute that as per Ex.A.4 contract, R.W.1 agreed to retention by Government the bank guarantees to a tune of Rs.3,44,000/- as security for due fulfillment of the contract to the satisfaction of EE, Warangal. Clause 6 of the agreement provides that the security deposit given by the contractor shall be returned upon the terms and conditions being fulfilled and performed to the satisfaction of the SE. In addition to this, first respondent also agreed for EE withholding 3% of the contract amount as additional security. Though two works remained to be completed by 31.3.2004, none of the officials concerned initiated any action either for encashing bank guarantee or forfeiting the security and additional security deposit. From this and also from various documents referred to hereinabove an inference can be drawn that there was no contract subsisting after 31.3.2004, as otherwise nothing prevented P.Ws.3 to 5 to initiate action to forfeit deposit and encash bank guarantee. As held by the Supreme Court in **Munishamappa** (supra), the fact that the bills of the elected candidate were settled at a later date and that the security deposit was refunded later on, will not disqualify the appellant in view of the Explanation to Section 9-A of the Act. Secondly after closing the contract, P.W.4 requested P.W.5 to send closure statements. The DEE concerned prepared closure statements and sent a report, Ex.A.29, which resulted in P.W.3 issuing Ex.A.25 on 24.11.2004 to take up balance works under clause (PS) 61 of APSS. No action was contemplated for forfeiture of deposit or encashing security or withholding amounts as per clause (PS) 61, which deals with power of EE to suspend the work and issue notice directing contractor to complete the work. It also enables Government to take possession of the work for the purpose of completing it if the notice issued by EE is

not complied with within fourteen (14) days after such notice. The direction issued by P.W.3 in Ex.A.25 to take up the balance works as per clause (PS) 61 suggests that the department decided to get the works completed by engaging another contractor. Actually and factually as deposed by P.W.4, it was decided to get 4% of the balance works i.e., blacktopping of Reponi and Khanapur roads by inviting fresh tenders. It is also in the evidence of P.W.5 that the estimate for balance works were prepared by Assisting Engineer on 10.12.2004 and the balance works were completed by M/s.YPL. This only shows that after 31.3.2004 there was no substituting contract for execution of works between R.W.1 and Government. There was valid closure/termination of contract by mutual consent and after such termination the department got the works completed by engaging YPL.

When R.W.1 asked for cancellation of the contract to enable him to contest the election, P.W.4 issued necessary orders closing the contract. Whether or not the contract being closed amounts to cancellation/termination, the moment the contractor refuses to perform his promise and requests for cancellation of the contract, the contract comes to an end. This is directly supported by two decisions of the Supreme Court in **Munishamappa** (supra) and **Ashling** (supra). In the former decision, it was held that even if the contract had not been terminated by the parties themselves, the contractor must be held to be in clear breach of agreement and therefore the contract cannot be said to be subsisting thereafter and that if the contract is discharged by the breach of the contractor, the entire contract necessarily goes and along with the agreement if any the maintenance, must necessarily go, leaving the party aggrieved to seek remedy to recover damages for the breach of the contract. In **Ashling** (supra), besides reiterating this principle, it was further held that even if the request of the contract is not accepted, the contract comes to an end. It is apt to quote the following.

> While it is true that there was such a contract in existence prior to November 30, 1979, Respondent 1 wrote a letter on November 30, 1979 to the concerned Executive Engineer stating that he was closing the said contract. The last date for filing nomination was December 10, 1979. It is argued that the contents of the said letter do not have the effect of putting an end to the contract. After going through the contents of the letter it is absolutely clear that the contractor unilaterally put an end to the contract and informed the Department concerned accordingly and also he had resigned from the contractor's list of PWD, Manipur. Thus after this letter the contract came to an end by breach and the contract was no longer subsisting. Mr.Rangarajan has submitted some very nice and delicate questions for consideration. One of them being that until and unless the letter is accepted by the

> authority the contract would continue and thus the respondent would suffer from the disqualification. In our opinion having regard to the contents of the letter it is not possible to accept the argument of Mr Rangarajan that the contract was subsisting. The acceptance of the letter by the authorities was unnecessary for putting an end to the contract although the breach may give rise to a cause of action for damages, No other point is raised before us.

Whether it is competent for P.W.4 to terminate the contract. The submissions made by the Counsel on this aspect are already noticed supra. An objection is raised by first respondent that in absence of specific pleading that SE is not competent and some other authority is competent to terminate the contract, evidence if any cannot be looked into. It is settled law that under Section 83(1)(a) of the Act, it is mandatory that election petition shall contain a concise statement of material facts on which the petitioner relies. First a concise statement of material facts and then the fullest possible particulars must be given by the petitioner and omission of a single material fact leads to an incomplete cause of action and statement of claim becomes bad. An election petition, which cites words of the section cannot be said to disclose a cause of action. Every allegation must appear and particulars must be full giving necessary information because it would be inconceivable that there could be an election petition without material facts. If the material facts are not pleaded or pleaded without giving full particulars, it is competent for the Court to strike down pleadings under Order VI Rule 16 of CPC, at any stage of the proceedings. [see **Samant N.Balakrishna** (supra), **Charan Lal Sahu** (supra), **Dhartipakar Madanlal Agarwal** (supra) and **Santosh Yadav** (supra)]. In the last cited decision, it was laid down as under.

> Section 83 of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. **An election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election petition**. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking

> relief on a ground under Section 100(1)(d) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the election has been materially affected.
>
> (emphasis supplied)

In E.P.No.1 of 2004, which is filed by P.W.2, material facts regarding these allegations are not pleaded nor particulars are given. There is not even allegation that P.W.4 is not competent to terminate the contract with R.W.1. Insofar as E.P.No.3 of 2004 in paragraph 3(m) of the petition, it is alleged as under.

> "… … … Black topping of these 2 roads was not completed even today as was completed in respect of the other road works covered by the package. Suppressing these facts the 1st respondent claimed to have made a representation on 31.1.2004 to the SE, PR Circle, Warangal, and basing upon such a representation the SE, PR Circle, purporting to have issued a proceeding in his Memo.No.T1/PMGSY/PHII/AP21/11/01/2004, dated 31.3.2004 stating that the contract was closed on the request of the contractor to enable him to contest in the Legislative Assembly General Elections. The representation purported to have been made by the 1st respondent to the SE concerned is not genuine as on that day the question of filing nomination of the 1st respondent did not arise. Therefore, such a representation dated 31.1.2004 must have been brought into existence in connivance with the concerned SE. In any event the SE concerned cannot close the contract in question at the behest of the contractor who is the 1st respondent herein to facilitate him to file his nomination on 31.3.2004. In fact the contract was not terminated on 31.3.2004 and this is evident from the very Memo dated 31.3.2004 wherein the subordinate Executive Engineers of Warangal and Mahabubabad were instructed to submit the closing statements for taking action as per departmental norms in force. A copy of the Memo No.T.1/PMGSY/PH-II/AP21/11/01/2004, dated 31.3.2004 is filed herein as Annexure-C to this Election Petition… … …"

The gravamen of the allegations made by the petitioner is that the representation of R.W.1 to terminate the contract is not genuine because the said representation dated 31.1.2004 would not have been made when the elections were not announced, that the representation dated 31.1.2004 was brought into existence in connivance with EE concerned and that SE cannot terminate contract to facilitate first respondent to file nomination on 31.3.2004. This is denied by first respondent indeed during the trial as well as during arguments. It is not disputed – as already mentioned earlier –by learned Senior Counsel for petitioners that mentioning of date of representation in

Ex.A.20 as 31.1.2004, is a mistake and in fact, first respondent made representation only on 31.3.2004. The allegation is "SE concerned cannot close the contract" at the behest of the contractor. The allegation that "SE concerned cannot close contract" cannot be treated as "SE is not competent to close contract". Both could be different in particular context and certainly give rise to different impressions. Therefore, this Court holds that material facts with full particulars insofar as the competency of the SE are not pleaded properly.

Learned Counsel for first respondent alternatively submitted that SE is competent to terminate the contract. He would submit that the authority, who entered into the contract has power to impose penalty, to extend time and to terminate the contract, as such power is incidental and adjunct to the power to enter into contract. He also would urge that in absence of any other specified designatee or any delegation to other authority to terminate the contract, it is only the SE who can terminate the contract because SE alone is authorized to enter into contracts. Reliance is placed on **Rayappan v Madhavi Amma**[20], **Mohd. Yunus Saleem v Shivkumar Shastri**[21], **Union of India v Gurubux Singh**[22], **Heckett Engineering Company v Workmen**[23], **Govt. Branch Press v D.B.Belliappa**[24], **Jayantbhai Manubhai Patel v Arun Subodhbhai Mehta**[25] and **Kamaleshkumar Ishwardas Patel v Union of India**[26].

As held by the Supreme Court in **Jeet Mohinder Singh v Harminder Singh Jassi**[27] election of a candidate to legislature cannot be lightly interfered with. Whatever the grounds of challenge, the law requires strict compliance with the rules of pleadings, evidence and appreciation of such evidence enabling or disabling to draw definite conclusions. The petitioner in E.P. No.1 of 2004 did not take such a plea

and therefore it ought to be rejected as lacking in material facts. Insofar as E.P.No.3 of 2004 is concerned, this Court has taken the view that material facts are not pleaded in strict compliance with Section 83(1) (a) of the Act, however, as both the Counsel argued the point as an alternative submission, this Court has taken up the examination of the same. Petitioner, who challenges the authority of P.W.4 to close/terminate the contract, has to lead evidence and prove the same, because under Section 102 of Indian Evidence Act, 1872, burden lies on the person who would fail if no evidence at all were given on either side.

There is no documentary evidence let in on this point though relevant codal provisions from PWD code and executive instructions issued thereunder are relied on. The oral evidence on the question is that of P.Ws.1, 3 and 4. It is deposed by P.W.1 that he has no personal knowledge and that he came to know about termination of contract only after first respondent filed written statement. This also lends support to the observations made herein above that the pleading in this regard is non-compliant with the requirements of law. The petitioner in E.P.No.3 of 2004 was not even aware of termination of contract till elected candidate filed his written statement. P.W.3 and P.W.4 – CE and SE respectively – while asserting that closure of contract and termination of contract are one and the same thing, say that P.W.4 is competent to terminate the contract and there is no necessity to seek ratification from the CE. They also assert that P.W.4 being the authority to enter into contract is also authority to terminate the contract. Be it noted that, P.W.3 to P.W.6 are Engineers in various capacities summoned by the petitioners themselves to give evidence and also produce documents. When these witnesses themselves assert that the authority or authorization to enter into works contracts include authority to cancel/terminate the contracts, there should be strong rebuttal evidence, which is absent. Petitioners have not discharged their burden by bringing in cogent and convincing evidence and it is left to the interpretative exercise by election Court.

Article 299 of Constitution mandates that (i) all contracts on behalf of State shall be expressed to be made by the Governor of the State, and (ii) all contracts shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. This provision has been subject matter of interpretation by the Supreme Court in **B.K.Mondal** (supra), **Karamshi** (supra), **Sipahi Singh** (supra) and **Om Prakash Baldev Krishan** (supra). In all these cases, it is laid down that if a contract on behalf of Government is not entered into as provided under Article 299(1) of Constitution (which was Section 145(3) of Government of India Act, 1935) and such contract is not binding on Government unless it is ratified by them. An excerpt from the last of the four precedents herein would suffice. After referring to **State of Bihar v Karam Chand Thapar**[28], **Seth Bhikraj Jaipuria v Union of India**[29], **Union of India v A.L.Rallia Ram**[30] and **Timber Kashmir (P) Ltd v Conservator of Forests, Jammu**[31], the Apex Court laid down as follows.

> A contract entered into by the Governor of a Province must satisfy three conditions, namely, (*i*) it must be expressed to be made by the Governor; (*ii*) it must be

executed; and (*iii*) the execution should be by such persons and in such manner as the Governor might direct or authorise. These three conditions are required to be fulfilled. This position was reiterated by this Court again in *Seth Bikhraj Jaipuria* v . *Union of India.* This Court explained that three conditions as mentioned in *State of Bihar* v . *Karam Chand Thapar* had to be fulfilled, and further reiterated that the object of enacting these provisions was that the State should not be saddled with liability for unauthorised contracts and, hence, it was provided that the contracts must show on their faces that these were made by the Governor-General and executed on his behalf in the manner prescribed by the person authorised. It is based on public policy. No question of waiver arises in such a situation. If once that position is reached, and that position is well settled by the authorities over a long lapse of time, no question of examining the purpose of this requirement arises. In *Union of India* v . *A.L. Rallia Ram* this Court again reiterated that the agreement under arbitration with Government must be in accordance with Section 175(3) of Government of India Act, 1935.

Ex.A.4 contract was entered into with R.W.1 by P.W.4 on behalf of Governor of Andhra Pradesh. As per clause (2) of Ex.A.4 agreement, the EE, Panchayat Raj, Engineering Division, having jurisdiction over the work shall be competent to exercise all the powers and privileges reserved in favour of Government with previous sanction and subject to ratification by the SE, PR, Warangal Circle. As per clause (6), upon the contractor performing his promise to the satisfaction of SE, security deposit shall be returned. Therefore, for the purpose of Article 299(1) of Constitution, the SE was not only authorised to enter into contract with RW.1 on behalf of the Governor but he was also authorised to exercise all privileges including the power to refund the security deposit given by R.W.1. Authorisation or delegation under the powers given to SE to enter into contracts was always considered and treated as including all powers and privileges reserved in favour of Government. That SE is authorised under Article 299(1) of Constitution to enter into contracts on behalf of the Governor of Andhra Pradesh is accepted. What is however contended is that under the relevant paragraphs of PWD Code and its appendix, there is no specific power conferred on SE to terminate the contract. Learned Counsel for first respondent does not dispute that the power to close/ terminate the contract is not specifically mentioned in paragraph 159 of PWD Code[32] or under executive instructions issued in G.O. Ms.No.1632 General Administration (Services-C) Department, dated 24.10.1958[33]. It is to be seen whether there is implied power with SE, to terminate contract. G.O. Ms.No.1632, dated 24.10.1958, insofar

as it is relevant it reads as under.

Contracts, deeds and other instruments – Persons authorized to execute on behalf of the Governor.

In exercise of the powers conferred by clause (1) of Article 299 of the Constitution of India, and in supersessions of all the notifications in force on the subject, the Governor of Andhra Pradesh hereby directs that the under mentioned classes of deeds, contracts and other instruments shall be executed as follows:

Subject	Authority authorized
5. In the case of Public Works Department (subject to any such limit fixed by departmental orders) (a) All instruments relating to the purchase, supply and conveyance or carriage of material, store, machinery, etc. (b) All instruments relating to the execution of works of all kind connected with buildings including electric installations), bridges, highways, canals, tanks, reservoirs, docks, harbours and embankments and also instruments relating to the construction of the water works, sewage works, the erection of machinery and the working of coal mines. 5. (c) to (m) and 28 to 74 are omitted.	By the Secy. To Govt., Public Works Dept., Chief Engineers, Supdtg. Engineers, Director, Engineering Research Department, Supdt. of Works, Divisional Engineers (Highways). Divisional Officers, sub-divisional Officers in the Highways, Buildings and Irrigation Branches and Water Works. By Chief Engineers, Superintending Engineers, Director, Engineering Research Department, Superintendent of Works, Divisional Officers and Sub-Divisional Officers in the High-ways Buildings and Irrigation Branches and Water works.

It is very interesting to notice that entry 5(b) of the Government order as above speaks of instruments relating to execution of works including Highways. The officer authorized to execute these instruments among others is SE. Chapter II of PWD Code deals with, “Works”. It contains paragraphs 88 to 224. Nowhere has it mentioned any authority, who is conferred with power to terminate/cancel the contract entered into by SE as per Paragraph 159 of PWD Code read with executive instructions. Petitioners have failed to bring any evidence in this regard. Furthermore, in G.O.Ms.No.2209, dated 24.9.1965[34], it was clarified that SE is competent to execute contracts and piece work agreements upto the limit of tenders accepted by the competent authority regardless of whether they were accepted by SE and irrespective of restrictions imposed on the powers of SE in the matter of acceptance of contract. This means that SE is competent to enter into contract and also for terminating/ closing/cancelling the contract. The power to enter into contracts or the authorisation to execute instruments also includes the power to execute contracts or instruments cancelling a contract. It may also be noticed that under preliminary specification Nos.7 and 8 of APSS, SE is competent to alter the standard specifications for a particular

contract. Thus authorization given to SE under G.O.Ms.No.1632, dated 24.10.1958, is all pervasive and the same cannot be interpreted in a restrictive manner.

As noticed supra, P.W.4 addressed Ex.A.14/A.21 letter to P.W.3 requesting to ratify the action taken by the SE in closing the works covered by Ex.A.4. P.Ws.3 and 4 admit that there is no such requirement of ratification. Nonetheless by a communication dated 24.11.2004 (Ex.A.25), P.W.3 requested P.W.4 to take necessary action under P.S.61 of APSS. It is also in the evidence that subsequently estimates were prepared for balance work, they were sanctioned and the work was got done by YPL. All these circumstances would certainly lead to the conclusion that the contractor, R.W.1, was discharged and that the contract cannot be said to subsist as on 31.3.2004.

P.Ws.1 and 2 (petitioners in E.P.No.3 of 2004 and E.P.No.1 of 2004 respectively) did not raise any objection at the time of scrutiny of nominations. This fact does not however bar them to raise such a plea in an Election Petition filed under Section 80 of the Act. But as held by the Supreme Court, if objection is not raised at the time of scrutiny of nominations, it would weaken the objection. A reference may be made to **Ganpat** (supra). In the said decision, the Apex Court laid down as under.

> Though legally there is no bar to the appellant raising that question in the election petition questioning the election of the second respondent his allegation that Respondents 2, 6 and 9 are not members of the Scheduled Castes **would be considerably weakened because of his failure to object at the time of the scrutiny of the nomination papers**. All the candidates belong to the Nagpur City and all of them belong to the Scheduled Castes, ignoring for the present the question whether they were Buddhists. Respondents 2, 6 and 9 are not ordinary members of the Scheduled Castes. Respondent 2 is a doctor married to another doctor and practising in Nagpur City. He sees 60 to 70 patients daily. Respondent 6 is an advocate and as is seen from the result he is popular enough to get 16,123 votes and his wife is a doctor. Respondent 9 is also a doctor. They must, therefore, be well-known figures in Nagpur or at least among members of the Scheduled Castes. The appellant should certainly have known them personally or at least heard of them. He should have also heard whether they were Hindus or Buddhists. He must have known about their political activity. This is one point of view from which the evidence let in on behalf of the appellant should be considered.
>
> (emphasis supplied)

In view of the above, this Court holds that the contracts entered

into by first respondent for execution of works undertaken by Government were not subsisting, that there was valid termination of contract covered by Ex.A.4 by P.W.4 and that first respondent was not disqualified as on 02.4.2004 to be elected as MLA from Chennur Legislative Assembly Constituency. Issue Nos.1 and 2 are accordingly answered in favour of first respondent and against petitioners.

Issues 3 & 4:

These two issues relate to Kakatiya canal works. On the first day, when learned Senior Counsel for the petitioners commenced arguments, he very fairly submitted that there is no evidence let in by the petitioners and therefore these issues need not be considered. The submission of learned Senior Counsel is recorded and these issues are decided in favour of first respondent as the petitioners failed to prove these issues by proper evidence.

Issue 5:

This issue relates to the works entrusted for execution to YPL. The background admitted facts in relation to this issue are as follows. R.W.1 along with five others promoted YPL as a Private Limited Company registered under the Companies Act. His father-in-law was also a Director. Authorised share capital of the company is 48,000 shares of Rs.100/- each and R.W.1 was allotted 2425 shares. It is also in the evidence that R.W.1 was CMD of YPL and during his tenure as such, the company obtained a loan of Rs.40,00,000/- from Andhra Pradesh Industrial Development Corporation (APIDC). Allegedly his house and two residential plots were mortgaged to the financier as security. R.W.1 submitted resignation to the post of CMD of YPL. The Board of Directors passed special resolution on 11.09.2003 (Ex.B.1) accepting the resignation of R.W.1. The same was intimated to RoC in Form No.32 under Section 303(2) of Companies Act (Ex.A.10). The special resolution dated 11.9.2003 was also registered with RoC in Form No.23 as per Section 192 of Companies Act. Therefore, R.W.1 ceased to be CMD of YPL with effect from 11.9.2003; that is to say, at least six months prior to issue of election notification under the Act. Learned Counsel appearing for both the parties do not dispute these facts.

Learned Senior Counsel for petitioners submits that the contract for execution of road work from Moripirala to Zafargad from KM 2/580 to KM 16/800 was subsisting as on 02.4.2004, date of scrutiny of nominations, and therefore first respondent is disqualified under Section 9-A of the Act. He raised two contentions. First, R.W.1 resigned as CMD but he did not submit resignation as a Director and therefore being Director of YPL he shall be deemed to have interest in a subsisting contract entered into by him in the course of his business

with Government. Secondly, he submits that though it is a private limited company, R.W.1 being the promoter and major existing shareholder and having promoted the company for his own interest to garner contract from Government, must be held to have subsisting contract for execution of works with Government. He placed reliance on the decisions in **Chatturbhuj Vithaldas v Moreshwar Parashram**[35], **Guru Gobinda Basu v Sankari Prasad**[36], **Konappa** (supra), **Munishamappa** (supra) and **Sewaram** (supra).

Learned Counsel for first respondent submits that R.W.1 ceased to be Director after 11.9.2003 though he continued as a shareholder and therefore he does not incur disqualification under Section 9-A of the Act. He submits that when work was entrusted to YPL, first respondent was not a Director of the company and therefore he cannot incur any disqualification. He nextly submits that the company being juristic person even if the work is entrusted to YPL, the same does not mean that contract for execution of work is subsisting between its Directors and the company. He would urge that a strict view of Section 9-A of the Act is not permissible especially when Parliament has chosen to amend Section 7(a) of the Act by substituting Section 9-A of the Act. He placed reliance on **Bhagwan Singh v Rameshwar Sastry**[37], **Lalitheshwar Prasad Sahi v Bateshwar Prasad**[38], **Mangilal v Krishnajirao Pawar**[39], **Jugal Kishore Patnaik v Ratnakar Mohanthi**[40], **Prakash Khandre** (supra), **Date and Carrington Invt. (P) Ltd v P.K.Prathapan**[41] and **Shrikant** (supra). It is his submission that even if R.W.1 is treated as a Director with major stake in YPL, Section 9-A of the Act is not attracted.

The point needs to be examined from two angles. First, whether R.W.1 resigned as a Director of YPL on 11.9.2003. Secondly, whether a Director of a private company having subsisting contract with Government for execution of works, incurs disqualification under Section 9-A of the Act. Insofar as first query is concerned, plea of petitioners is that first respondent is primarily interested in profits of the work and that he is not only shareholder but CMD of YPL also. In his own words, petitioner in EP No.3 of 2004 alleges in his petition as under.

> The petitioner further submits that the 1st respondent was the Managing Director of Yamuna Projects Pvt. Ltd., during the time when the above three contracts were entrusted with the said company by the R&B Department. [see para 3(u)].
>
> Section 9-A of the R.P.Act, 1951 cannot be said to be inapplicable to the case of the contracts executed by Yamuna

Projects Pvt. Ltd., on the ground that such company was a legal person by itself and the said contracts are not with the 1st respondent. The law requires as held by Supreme Court in Konappa case that the candidate should not have any interest in any contract with the government and even a shareholder as a partner has an interest sufficient to attract the provisions of Section 9-A of R.P.Act, 1951. In the instant case the 1st respondent is the kingpin in getting the Yamuna Project Pvt. Ltd., registered and has been running the very private limited company for his benefit and he is the major beneficiary of the works carried out by it and that these contracts entrusted with Yamuna Projects Pvt. Ltd., are the contracts in which the 1st respondent is interested and all these contracts are still subsisting and the execution of the contracts are not complete. Therefore, the 1st respondent as a candidate was under disqualification and he could not stand for the election. [see para 3(v)].

Though these works are in the name of Yamuna Projects Pvt. Ltd., the 1st respondent is primarily interested in the profits of the said works. He is not only a shareholder but he is the Chairman and Director of the Company. Till recently he was the Managing Director of the said Private Ltd. Company. These circumstances make it clear that the works in question are the works undertaken by the Government of A.P. in R&B Department and the contracts in question are subsisting. The execution of those contracts are still incomplete and the agreements were entered into by the Yamuna Projects Pvt. Ltd., in the course of the business of 1st respondent and such agreements were entered into by the Pvt. Ltd. Company for the execution of the above said works undertaken by the government. For this reason the 1st respondent having interest in the contracts has become disqualified. This disqualification continues so long these contracts are subsisting. Thus he has become disqualified in the light of the provisions contained in Section 9-A of R.P.Act, 1951. [see para 3(x)].

In para 4(g) of EP No.1 of 2004, it is alleged as under

Thus, having got the company registered he has assumed the office as the Managing Director and got the works entrusted with the said Pvt. Ltd., Company. Thus the Respondent became the beneficiary of the works allotted to the said Pvt. Ltd., company. The Respondent is not only a shareholder in the company but also the Chairman and Director of the Company. The said Pvt. Ltd., Company entered into an agreement with the S.E. R&B, Warangal, vide agreement NO.6/2003-04, dated 16.6.2003, for the execution of a road work from Palakurthi to Nancharimadur P.R. Road to Thorruru – Veligonda P.W.D. Road Via Upparagudem – Peda Vangara. The value of the aid contract is R.1,01,08,269/-. The stamps for the purpose of the above

said contract are also purchased in the name of the Respondent. The said project is still pending.

In written statement filed by first respondent in EP No.3 of 2004, the award of contract for Rs.1,01,08,269/- under agreement dated 16.6.2003 and another contract for Rs.1,16,48,622/- under agreement dated 12.5.2003 to YPL, and purchase of stamp papers for execution of these agreements by R.W.1 in his capacity as CMD of YPL is admitted. He however denies that he purchased the stamp papers and entered into agreements with Government in his personal capacity. The allegations made by petitioners are traversed by first respondent in para 20 of written statement in EP No.3 of 2004 as below.

> This respondent has submitted his resignation to the post of Chairman and Managing Director of M/s.Yamuna Projects (Pvt) Limited. Accordingly, in the Board meeting held on 11.9.2003 at the Registered Office at Warangal at 11.00 a.m. a special resolution was passed accepting the resignation of this respondent as Chairman and Managing Director of the Company and in his place Smt.J.Bharathi, W/o.Sri J.Sampath Rao, Director of the company was appointed as Chairman and Managing Director of the company. It was also resolved in the said Board meeting that the Chairman of the meeting requested Sri P.Ratnakar Rao, Director of the company to communicate this information to all the Government Departments, Financial Institutions and all other persons dealing with the company and also to submit relevant documents with the Registrar of Companies of Andhra Pradesh, Hyderabad. In pursuance of the said special resolution unanimously accepting the resignation of this respondent as the Chairman and Managing Director of the M/s.Yamuna Projects (Pvt) Limited, the said company has informed the same to the Registrar of Companies duly filing the relevant documents as per the Provisions of the Companies Act, 1956 vide Form Nos.23 and 32.

P.W.1 in his chief examination deposed that first respondent did not choose to resign as Director of YPL, and that though he resigned as CMD, he continued as Director and shareholder having substantial interest in YPL. He further deposed that the income tax returns, Exs.X.4 and X.5, for the assessment years 2003-04 and 2004-05 respectively, also reveal that first respondent continued as Director of YPL. In cross-examination by Counsel for first respondent, P.W.1 asserts that the records maintained by RoC show that first respondent is Director of YPL. He further stated that, because first respondent did not resign as Director, he came to conclusion that it is he who entered into the agreements. Though he denied Ex.A.11 resolution of Board of Directors, when he was confronted with Ex.A.10, he admitted that Smt.J.Bharati was appointed as Director of YPL in place of first

respondent. First respondent as R.W.1 in chief examination gave evidence to the effect that he submitted resignation to the post of CMD and Director of YPL, which was accepted by Board of Directors on 11.9.2003, and that he has no interest in the company except as a shareholder. He also said that Smt.J.Bharati was elected in his place as CMD. In the cross-examination, R.W.1 asserted that he resigned as Director also and that the same was accepted by Board of Directors on 11.9.2003. The oral evidence as such is not any help to either party to prove or disprove their respective portions.

Ex.B.1 is copy of extract of the minutes of YPL Board meeting on 11.9.2003. This resolution is to the effect that the Board resolved to accept resignation submitted by R.W.1 for his post as CMD and that he will continue as shareholder. It also shows that Smt.J.Bharati is appointed as CMD for a period of five years. Ex.A.10 is the return under Section 303(2) of Companies Act sent to RoC informing that R.W.1 resigned on 11.9.2003 as CMD and that in his place Smt.J.Bharati is appointed as CMD. This shows that the latter is appointed as CMD in the place of Director, Dugyala Srinivasa Rao (R.W.1). Ex.A.11 is copy of Ex.B.1 resolution communicated to RoC in Form No.23 as required under Section 194 of Companies Act informing about the resignation of R.W.1. Apart from this, we also have Exs.X.4 and X.5, which are income tax returns. From these Income Tax returns, it is not clear whether R.W.1 continued as a Director during these two years. Insofar as Exs.A.10, A.11 and B.1 are concerned, it is reasonable to infer that R.W.1 resigned as a Director as well as CMD and continued only as a shareholder. The reasons for drawing such inference and conclusion are mentioned in the ensuing paragraph.

YPL is a private company as defined by Section 2(35) read with Section 3(1)(iii) of Companies Act. Unless it is explicitly provided or explicitly exempted by the provisions of Companies Act, Memorandum of Association and Articles of Association of YPL governs its affairs. It is also regulated and governed by the provisions contained in Chapter-II of Part-IV (Constitution of Board of Directors) of Companies Act. As per Section 269 of Companies Act, every public company or private company, which is a subsidiary of a private company, is required to appoint a Managing Director in accordance with the conditions specified in Parts-I and II of Schedule XIII of Companies Act. There is no mandatory requirement of appointment of Managing Director in the case of private company as such. But as per clause 40 of Articles of Association of YPL, (Ex.A.34), business of the company shall be carried on by Managing Director on such remuneration, duty, authority and powers as determined by the Board. Be that as it is in

Company Law Jurisprudence, appointment of Managing Director, who need not necessarily be a Director, is always governed by the contract. The appointment or re-appointment of any Managing Director requires a special resolution under Section 190 read with 192 of Companies Act. A copy of such special resolution has to be filed with RoC within thirty days after passing or making thereof [See Sections 190, 192(1) and 192(4)(c) of Companies Act]. Ex.A.11 copy of resolution is communicated to RoC as required under Section 192(1) of Companies Act. This was done because when R.W.1 resigned as CMD and Smt.J.Bharati was appointed as CMD it is mandatory requirement under Section 192 of Companies Act to submit information to RoC.

When a Director is appointed, reappointed, removed or resigned, and new Director is appointed, a special resolution is not required nor is any intimation to be given to RoC as required under Section 192(1) of Companies Act. But under Section 303(1) of Companies Act, every company is required to keep a register of its Directors, Managing Director, Manager and Secretary containing details as specified therein. Whenever there is a change in the register of Directors or change in the particulars of appointment of Directors, under Section 303(2) of Companies Act, company has to send a return in Form No.32 to RoC containing particulars of change among its Directors and Managing Director. Ex.A.10 is the return in Form No.32 and Ex.A.11 is special resolution in Form No.23 passed under Section 192 of Companies Act. Both Exs.A.10 and A.11 were filed with RoC on 01.10.2003. If R.W.1 had resigned only as CMD, there was absolutely no necessity for YPL to file Form No.32 as well. Secondly, Ex.A.10 itself shows that Smt.J.Bharati was appointed as CMD in place of Director Dugyala Srinivasa Rao, and that the latter resigned as CMD. If R.W.1 had resigned only as CMD there would not have been any necessity to mention in Ex.A.10 that Smt.J.Bharati is appointed in place of Director Srinivasa Rao. This clinchingly shows that R.W.1 has successfully discharged the onus on him that he resigned as Director as well as CMD, though initial burden of proof, which lies on petitioners, has not been discharged by them by producing convincing evidence. It is no doubt true that in Company Law, a Director, who has been appointed as CMD under a contract/agreement, ordinarily does not cease to be Director on his resignation as CMD. But as rightly submitted by first respondent Exs.A.10 and A.11 themselves show that R.W.1 resigned as Director and CMD. That is the reason why in Ex.A.11 and Ex.B.1 special resolution, Board of Directors of YPL resolved to accept resignation of R.W.1 as CMD and further mentioning that, “he will be continuing as shareholder”. If only he was

to be continued as Director of YPL, nothing would have prevented Board of Directors to mention this aspect of the matter also. When the Board of Directors resolved that resignation of R.W.1 for the post of CMD is accepted and that he will continue as a shareholder, it is not possible to accept the submission of learned Senior Counsel that R.W.1 did not resign as Director.

Learned Senior Counsel next contended that first respondent being promoter has considerable interest in YPL, that it was he who was responsible for getting Government contracts, that he has substantial shareholding and therefore disqualification under Section 9-A of the Act is attracted. He would also urge that even if first respondent ceased to be the Director from September 2003, being a shareholder he attracts disqualification under Section 9-A of the Act. Learned Counsel placed reliance on the decisions of the Supreme Court in **Konappa** (supra), **Sewaram** (supra), **Chatturbhuj Vithaldas** (supra) and **Guru Govinda Basu** (supra). Refuting this argument, learned Counsel for first respondent submits that when once a company is incorporated by reason of Section 34 of Companies Act, any contract by or in favour of incorporated company cannot be treated as a contract in favour of the shareholder/Director/Managing Director. He relies on the observations made by the Supreme Court in **Dale and Carrington Invt. (P) Ltd** (supra). He nextly contends that when the contract is entered into by company with Government, Chairman or any Director does not incur any disqualification even if such work is incomplete. Reliance is placed on **Bhagwan Singh** (supra), **Mangilal** (supra) and **Jugal Kishore Patnaik** (supra).

The decisions in **Konappa** (supra) and **Sewaram** (supra) relate to works being executed under a contract given to a firm. They would be of no assistance to the case on hand. It would not be out of place to refer to provisions of Indian Partnership Act, 1932 (Partnership Act, for brevity). Partnership is the relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all. It is a contract and relationship of partners is not a status (Sections 4 and 5 of Indian Partnership Act, 1932). Every partner is (See Section 9) bound to carry on business of the firm to greatest common advantage of all partners and act in a just and faithful manner. In a business carried on by the firm, every partner has a right to take part in a diligent manner and as per Section 14 of Partnership Act, the property of the firm, and interest and right in the property either existing or acquired later, shall be included in the stock of the firm. Such property shall have to be used by partners exclusively for the purpose of business. Section 17 of Partnership Act enumerates rights and duties of partners. It is to the effect that (a) where a change occurs in

the constitution of a firm, the mutual rights and duties of partners in the reconstituted firm remain the same as they were immediately before such change, as far as may be; (b) where a firm is constituted for a fixed term continues to carry on business after expiry of that term, the mutual rights and duties of the partners remain same as they were before expiry; and (c) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are same as those in respect of the original undertakings.

Sections 4, 14 and 17 of the Partnership Act make it clear that persons constituting partnership have unity of title in relation to the property of the firm. Section 29 of the Partnership Act lays down that a transfer by a partner of his interest in the firm does not entitle transferee to interfere with the conduct of the business or to require accounts but only receive the share of the profits of the transferee partner. Indeed, Section 31 of the Partnership Act prohibits the introduction of a stranger as a partner into the firm without consent of all the existing partners. As long as a firm is not dissolved in accordance with Chapter VI of the Partnership Act and/or in accordance with the contract between the partners (Section 40), all partners of the firm shall be deemed to be persons having common interest in the right, title and possession of the property. Even if a firm is reconstituted in accordance with terms of the contract among partners with or without some new partners, the nature of right, title, interest and possession of the original partners does not change. Indeed, under Section 47 of the Partnership Act, after dissolution of the firm, mutual rights and obligations of the partners continue notwithstanding such dissolution so far as such rights and obligations may be necessary to wind up the affairs of the firm. Thus if a firm is given contract for execution of work undertaken by Government even if an elected candidate claims that he ceased to be partner, as long as the work remains incomplete, subject to other circumstances being proved, such candidate would certainly attract disqualification under Section 9-A of the Act. The same however is not true in case of an incorporated company, nor ordinarily, it is permissible to go behind corporate façade to find out the kingpin running the show.

An incorporated company is liable as a juristic person. It is different from its shareholders and directors of the Board of Company. The acts of malfeasance and misfeasance and acts of misdemeanor by the shareholders and directors of a corporation (company), do not always bind company as such. In this connection, a reference may be made to **Dale and Carrington Invt. (P) Ltd** (supra), wherein the

Supreme Court reiterated the principles as under.

> At this stage it may be appropriate to consider the legal position of Directors of companies registered under the Companies Act. A company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by some resolution of the Board of Directors of the company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorised to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company. To the extent the power of the Directors is delineated in the Memorandum and Articles of Association of the company, the Directors are bound to act accordingly. As agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. The fiduciary capacity within which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent.

However so as to apply law to ascertained facts, judicial process can ignore juristic personality of the company and haul-up the directors and in certain cases even shareholders to discharge the legal obligations. When the corporate veil is lifted/pierced, it only means that the Court is assuming that the corporate entity of a concern is a sham to perpetuate the fraud, to avoid liability, to avoid effect of statute and to avoid obligations under a contract. However, in these contexts and situations incorporated company cannot be equated to its shareholders/directors.

In **Life Insurance Corporation of India v Escorts Limited**[42], the Supreme Court laid down that, “the corporate veil may be lifted where a statute contemplates fraud or improper conduct is intended to be prevented or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.” In **State of U.P. v Renusagar Power Company**[43] the Supreme Court after referring to **Life Insurance Corporation of India** (supra), declared the law thus; “it is high time to reiterate that in the expanding horizon of modern

jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation."

Notwithstanding the Court's power to "pierce or lift corporate veil", classical statement of law in **Aron Salomon v. Salomon and Co. Ltd.,** [44] to the effect that, "the company is at law a different person altogether from the subscriber … … and the company is not agent of the subscribers nor are the subscribers as members liable in any shape or form" cannot be ignored while appreciating corporate principles, and *inter se* jural relations between shareholders/Directors vis-à-vis Corporation which has its own juristic personality.

If the submission of learned Senior Counsel for petitioners is to be accepted, it amounts to introducing new species of disqualification under Section 9-A of the Act, namely, shareholder of an incorporated company also attracting disqualification by supplying *causus omissus*. Is it permissible to widen the scope of Section 9-A of the Act ignoring legislative history behind its enactment? The answer must be emphatically in the negative. In **Shrikant** (supra), a Division Bench of Supreme Court considered *inter alia* the question whether statutory body or authority as defined in Article 12 of Constitution is an "appropriate Government" for the purpose of Section 9-A of the Act. The question came up in the background of appellant's election being set aside by Bombay High Court on the ground that he had a subsisting contract with Godavari Marathwada Irrigation Development Council, which is a statutory body established under Maharashtra Jeevan Authority Act, 1976. The Supreme Court considered various provisions in the Act dealing with disqualification being chosen as and for being MLA. Disqualification under Section 9-A of the Act was pointedly considered and following six requirements of application for disqualification under Section 9-A of the Act were culled out as below.

> The six requirements for application of disqualification under Section 9-A of the Act where a candidate holds a contract for execution of works undertaken by the appropriate Government have been listed by this Court in *Kartar Singh Bhadana* v. *Hari Singh Nalwa* 9 as follows: (SCC p. 665, para 8)
>
> (i) There should be a contract enteed into by the candidate;
>
> (ii) such contract should be entered into by him in the course of his trade or business;
>
> (iii) the contract should be entered into with the appropriate Government;
>
> (iv) the contract should subsist;
>
> (v) the contract should relate to the works undertaken by the appropriate Government; and

(vi*)* the contract should be for execution of such works.

The Supreme Court indicated the approach the Court should adopt while interpreting the provisions dealing with disqualification. It is apt to extract the following.

> A person cannot, therefore, be disqualified unless he suffers a disqualification laid down in Article 191 of the Constitution or under Sections 8, 8-A, 9, , 10 or 10-A of the Act. **It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention. A combined reading of Article 191 of the Constitution and Chapter III of the Representation of the People Act, 1951 makes it clear that a person can be held to be disqualified for being chosen as, and for being, a Member of the Legislative Assembly or Legislative Council of a State only on the following, and no other, grounds**:
>
> *Disqualifications under the Constitution*
>
> (i*)* if he holds any office of profit under the Government of India or the Government of any State (specified in the First Schedule), other than an office declared by the legislature of the State by law not to disqualify its holder vide Article 191(1)(*a*);
> (*ii*) if he is of unsound mind and stands so declared by a competent court vide Article 191(1)(*b*);
> (*iii*) if he is an undischarged insolvent vide Article 191(1)(*c);*
> (*iv*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State vide Article 191(1)(*d*);
>
> *Disqualifications under the Act*
>
> (*v*) if he is convicted and sentenced for any offence as provided/enumerated in Section 8 of the Act;
> (*vi*) if he is found guilty of corrupt practices by an order under Section 99 of the Act vide Section 8-A of the Act;
> (*vii*) if he is a person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State vide Section 9 of the Act;
> (*viii*) if he is a person having a subsisting contract with the State Government for the supply of goods to or for the execution of any works undertaken by that Government, vide Section 9-A of the Act;
> (*ix*) if he is a person who is a managing agent, manager or secretary of any company or corporation, in the capital of which the State Government has not less than twenty-five per cent share vide Section 10 of the Act;
> (*x*) If he is a person who has been declared as disqualified by the Election Commission for having failed to lodge account of election expenses within the time and in the manner required

by or under the Act vide Section 10-A of the Act.

(emphasis supplied)

Thus it is well settled law that adding or subtracting disqualification on the ground of convenience, equity or logic is not permissible. Election Law requires strict interpretation because the right to vote and right for being chosen as a member of legislative body cannot be interfered with lightly.

As seen from the statement of details of shares held, which is part of Ex.X.4, Income Tax return for assessment year 2003-04, there are at least ten shareholders in YPL, who have more than 2000 shares and five other persons who have 2430 shares along with first respondent. Even assuming that first respondent continued to be a Director for the reason that he did not resign as Director or that he continued to have major stake in YPL, does it attract disqualification under Section 9-A of the Act. Here again, answer must be against petitioners. When a person enters into a contract on behalf of a corporate body or statutory body, such contract cannot be treated as a contract individually but it is only on behalf of body/concern, which he represents. **Bhagwan Singh** (supra) and **Jugal Kishore Patnaik** (supra) relied on by learned Counsel for first respondent are cases of sarpanches. In both the cases sarpanch/Mukhya signed the contract as agent of gram panchayat and not in his personal capacity and therefore disqualification under Section 9-A of the Act was held not attracted.

In **Mangilal** (supra), respondent, Krishnaji Rao Pawar, was elected as MLA from Dewas Assembly constituency in a bye-election. Appellant assailed the same before Indore Bench of Madhya Pradesh High Court on the ground that the election is vitiated by corrupt practices, that excess expenditure was incurred and that respondent had subsisting contract with State attracting disqualification under Section 9-A of the Act. There was no denial that respondent was Chairman of Board of Directors of Dewas Senior Electric Supply Company Private Limited. The High Court placing reliance on its earlier decision in **Satya Prakash v Basheer Ahmed Qureshi** [45] repelled the contention holding that respondent could not be held to have directly entered into contract with Government. Supreme Court affirmed this view. Relevant observations are found in paragraph 9 of the judgment, which are as follows.

> We may first dispose of the point of disqualification. Section 9-A of the Act on which the entire argument rests, reads:-
>
> "*Disqualification for Government contracts*:

A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

It is unnecessary for the purpose of this case to reproduce the explanation. It **is clear that this Section 9-A only covers contracts which have been entered into by a person in the course of his trade or business with the appropriate Government for the supply of goods to or for the execution of any works undertaken by that Government. Dr.Singhvi contended that the supply of electricity would amount to the supply of goods. That perhaps is so. But, in our opinion, the contract of supply of electricity by the Electric Supply Company can by no means be considered, to be a contract entered into by respondent No.1 in the course of his trade or business by reason merely of the fact that he was at the relevant time Chairman of the Board of Directors of the Company. It is not possible to describe the business of the Company to be the trade or business of the Chairman of the Board of Directors. A Company registered under the Indian Companies Act, it is settled beyond dispute, is a separate entity distinct from its shareholders. The Chairman of the Board of Directors of the Company while functioning as such cannot be said to be engaged in his trade or business as contemplated by Section 9-A of the Act. The legal position is so clear that the appellant's learned counsel, after an unsuccessful attempt to persuade us to the contrary view felt constrained not to pursue this point seriously.**

(emphasis supplied)

The facts in **Mangilal** (supra) are almost similar to the facts on hand. Ex.X.1 is signed by Smt.J.Bharati as Managing Director of YPL whereas Exs.X.2 and X.3 are signed by first respondent as Managing Director of YPL. These agreements were entered into by them on behalf of the company and not in personal capacity. Therefore applying the ratio in **Mangilal** (supra), it must be concluded that even if the contract of YPL with Government for execution of road work from Moripirala – Zafargad and another road work from Palakurthi – Nancharimadur, Panchayat road to Thorruru – Veligonda, PWD road via Peda Vangara, are subsisting as on 02.4.2004, disqualification under Section 9-A of the Act is not attracted. It must be therefore concluded that first respondent resigned as Director of YPL, that he only continued as a shareholder and that by reason of being a shareholder he does not incur any disqualification under Section 9-A of the Act. Issue 5 is therefore decided in favour of first respondent and against petitioners.

Issue 6:

This issue relates to the question whether petitioner in E.P.No.3 of 2004 is entitled for declaring him as validly elected candidate for

Chennur Legislative Assembly Constitution as per Section 101 of the Act. Learned Senior Counsel for petitioners did not make any submissions on this issue nor is it necessary for this Court to advert to this issue in view of the findings on issues 1 to 5.

Issue 7:

In view of the findings on issues 1 to 5 being decided in favour of first respondent, E.P.No.1 of 2004 and E.P.No.3 of 2004 are dismissed, under Section 98(a) of Representation of the People Act, 1951. The petitioners shall pay costs of Rs.10,000/- (Rupees ten thousand only) each to first respondent.

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(**V.V.S.RAO, J**)

August 2007.

NOTE:

L.R. Copy be marked.

(By order)

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(i) See Section 35(b) of Representation of the People Act, 1951; and

(ii) In **K.Prabhakaran v P.Jayarajan** (AIR 2005 SC 688 = [2005] 1 SCC 754), it is laid down that question of disqualification has to be determined with reference to the date of election or date of scrutiny of nomination paper.

[1] AIR 1969 SC 302

[2] AIR 1969 SC 447

[3] (1981) 3 SCC 260

[4] AIR 1993 SC 212

[5] AIR 2001 SC 2583 = (2001) 7 SCC 425

[6] (2002) 5 SCC 568

[7] AIR 2002 SC 3524 = (2002) 8 SCC 467

[8] (2005) 1 SCC 212

[9] AIR 2006 SC 918 = (2006) 2 SCC 682

[10] AIR 1962 SC 779

[11] AIR 1964 SC 1714

[12] AIR 1977 SC 2149

[13] AIR 1988 SC 2149

[14] AIR 1969 SC 1201 = (1969) 3 SCC 238

[15] AIR 1984 SC 209 = (1984) 1 SCC 390

[16] AIR 1987 SC 1577

[17] AIR 2002 SC 241 = (2002) 1 SCC 160

[18] AIR 1984 SC 988 = (1984) 2 SCC 205

[19] AIR 1975 SC 420 = (1975) 1 SCC 589

[20] AIR 1950 FC 140

[21] AIR 1974 SC 1281 = (1974) 4 SCC 396

[22] AIR 1975 SC 641 = (1975) 3 SCC 638

[23] AIR 1977 SC 2257 = (1977) 4 SCC 377

[24] AIR 1979 SC 429 = (1979) 1 SCC 477

[25] AIR 1989 SC 1289 = (1989) 2 SCC 484

[26] (1995) 4 SCC 51

[27] (1999) 9 SCC 386

[28] AIR 1962 SC 110

[29] AIR 1962 SC 113

[30] AIR 1963 SC 1685

[31] AIR 1977 SC 151

[32] 159. No authority lower than the officer in charge of a sub-division can accept any tender or make a contract for public works. The officers legally empowered to execute on behalf of the Governor of Andhra Pradesh, the different classes of deeds, contracts and other instruments are detailed in Appendix III. This power is, however, in each case subject to the departmental rules laying down the powers of officers to enter into contracts.

[33] AP PWD Code by Padala Rami Reddy, VII Edition (page 246)

[34] Ibid p87

[35] AIR 1954 SC 236

[36] AIR 1964 SC 254

[37] AIR 1959 SC 876

[38] AIR 1966 SC 580

[39] AIR 1971 SC 1943

[40] AIR 1976 SC 2130

[41] AIR 2005 SC 1624 = (2005) 1 SCC 212

[42] AIR 1986 SC 1370

[43] (1988) 3 Comp.LJ 1 (SC)

[44] 1897 Appeal Cases 22 = (1895-1899) All ER 33

[45] AIR 1963 MP 316